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STATE OF CALIFORNIA
SUPERIOR COURT

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| LOLKE LLOYD HAANSTRA,<br>Plaintiff,<br><br>VS<br><br>ASBESTOS CORPORATION LIMITED,<br>Defendant. | CASE NO. BC 338158 |

DEPOSITION OF: JOHN KELSE

DATE: MARCH 30, 2006

HELD AT: R.T. VANDERBILT, CO., INC.
30 WINFIELD STREET
NORWALK, CONNECTICUT 06855

Reporter: Janet A. Orfitelli, LSR #08
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## STIPULATIONS

It is stipulated by counsel for the parties that all objections are reserved until the time of trial, except those objections as are directed to the form of the question.

It is stipulated and agreed between counsel for the parties that the proof of the authority of the Commissioner before whom this deposition is taken is waived.

It is further stipulated that any defects in the notice are waived.

It is further stipulated that the reading and signing of the deposition transcript by the witness may not be signed before any Notary Public.



## INDEX



(Exhibits retained by: Attorney Welch)



(Deposition commenced at 1:20 P.M.)

MR. WELCH: And before we get started, this is Bruce Welch. I just want to put on the record that were are producing Mr. Kelse today in response to your notice. We've filed certain objections to the notice and to the material sought and we are not waiving any of those by going forward in the deposition today.

MR. LEVIN: I have a question with relation to that, because I've raised -- this is the thing that I'm a little bit concerned about after what you said. Basically we asked for documents in different categories, and you made objections and I have no problem to you reserving the right to assert those objections later, but you also did produce documents, and I'm assuming that you produced the documents that are responsive to the request and didn't hold back any relying on your objections because if you were to do that later, I would have no way of knowing that the documents that you've produced are not complete in response to this notice.

MR. WELCH: I think that is a fair statement, unless noted otherwise in the response

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or in the objection.
MR. LEVIN: Okay.
(At which point the deponent left the room.)
MR. WELCH: And Mr. Kelse has gone for coffee, and as soon as he returns I'll let you know and we can get started.
(THE DEPOSITION OFF THE RECORD.)
MR. WELCH: Mr. Kelse has just returned.
MR. LEVIN: Great.

JOHN KELSE, Deponent, having been first duly sworn by Janet A. Orfitelli, LSR, a Notary Public in and for the State of Connecticut, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEVIN:
Q Okay. Sir, my name is Bill Levin. I represent Mr. Haanstra. Can you state your name?
A John Kelse, K-E-L-S-E.
Q Okay. This deposition is being taken pursuant to the notice of the person most acknowledge and custodian of records of Vanderbilt, and I sent a

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copy of the notice. Do you have it there?
A Yes, we do.
Q Okay. Have you seen that notice?
A I reviewed it.
Q Okay, good. I'd like to mark that as Exhibit 1.
(PLAINTIFF'S EXHIBIT NO. 1 FOR IDENTIFICATION, The Notice of Deposition, RECEIVED AND MARKED.)
BY MR. LEVIN:
Q Okay. With respect to the categories that begin on page six, categories one through twenty-one, sir, if you could look at those and tell me whether you agree that you are the person most acknowledge at Vanderbilt with respect to those subjects, and if there are any that you wish to exclude because you don't feel that you are the person most knowledgeable, let me know.
A Okay. Well, I've turned to page six and on page six of the copy that I have, the first request number is request number ten, is that the right page?
Q No -- well, if you skim through the document then you will have a heading that says persons most acknowledge.
A Oh, I see. Yes, on page ten of the document

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that I have, categories of areas of inquiry for person most knowledgeable, is that it?
Q Yes.
A Okay.
Q And I just want you to tell me whichever is easier, either the ones that you believe you are the person most acknowledge pertaining to those or --
A Okay.
Q -- you're not. I just want to --
A I see. I see. These are linked -- these are linked to the response to request numbers. I got you.
Q Exactly.
A I'll have to go through here. I -- when I did take a quick look at this when it came in this morning, the earlier response for request, anything having to do with sales records, who sold what to whom, what year and how much and all of that sort of thing, I am certainly not the person for that.
Q Okay. Well, tell me which ones you are the person for, because I don't want to ask you --
A Okay. I see my name listed here, so I want to see who volunteered me for what.
Q Okay.
A Okay. Let's see. Number five: All documents containing information relating to the mining

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of talc. All documents you supplied between 1960 and 1985. Well, I -- if I took that literally, all documents, what do you mean by that?
Q Well, I'm not looking at the documents part. I'm looking at this part that lists subjects.
A Right. I'm just looking at the first -- under categories of area of inquiry. I see my name is listed for the first one which is inquiry number five.
Q Yeah, I don't -- I don't know. Somebody must have prepared something for you where they listed your name, because the list we sent out didn't list anybody's name.
A Well, somebody did.
Q Well, can we attach the document you're looking at as Exhibit 2?
MR. WELCH: Bill, I'll tell you what that is. That is our objections that was filed.
MR. LEVIN: Oh.
MR. WELCH: I handed him the wrong thing. I've got the notice, too.
THE WITNESS: Oh, good. I'm not hallucinating.
BY MR. LEVIN:
Q Why don't we go with the notice first.
A Oh, dear.

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Q And I'm thinking if we have the same thing it should be on page six.
MR. WELCH: Okay. Page six.
A Oh, is this it?
MR. WELCH: Of the notice now.
A Person most knowledgeable.
Q There should be numbers one through twenty-one.
A Okay.
Q And what I'm trying to do is, I don't want to spend any time on the areas that you don't feel that you are the person most knowledgeable. I do want to zero in on the ones that you do.
A Okay. You want me to just quickly run down the list and tell you?
Q I think that would be the most convenient way.
A Probably the most comprehensive. Talc you sold, I can't tell you anything about what was sold or didn't sell.
Q Okay. You can just give me the number. You don't even need to read the thing.
A I'm not the guy for one, not for two, not for three, not for four, not for five, not for six, although six. Six is where you mine the talc you

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supplied between the years 1960 and '85. I certainly would defer that to a mining engineer, to a mineralogist, you know, familiar with the mining, but I know the operation and the talc that we supplied between 1960 and 1985 certainly would have only come from two sources, known as the --
MR. WELCH: Okay. That's good. He can question you.
THE WITNESS: He can question me?
MR. WELCH: He's not acknowledge about that area.
THE WITNESS: I can tell you something about that.
BY MR. LEVIN:
Q Okay.
A Seven, distributors, no, I don't know. The sale, you know, the business stuff, system of distribution of your talc, business, I don't know about that. Composition of the talc you sold between the years 1960 and '85, I certainly can comment on that. Ten, asbestos content in the talc you sold, well, there isn't any, but yeah, I can comment. The tremolite content in the talc you sold, yeah, I can tell you that. Packaging your talc came in between the years '60 and '85, I can speak to that. I think everything

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was always in these fifty-five pound bags.
Q Okay.
A But you have to remember I started working at Vanderbilt in 1985 so --
Q Okay.
A Warnings about the hazards associated with asbestos exposure, blah, blah, blah, yeah, I can speak to that.
Q Okay.
A Your acknowledge of hazards associated with asbestos exposure, well, I was an industrial hygienist, so I can speak to that. When you first learned about the hazards associated -- as a hygienist, I can speak to that as a general category. Comp claims relating to asbestos disease, yeah, I can speak to that. When you first received a Workmen's Comp claim relating to asbestos disease, same as above. Membership in any organization that discussed the hazards associates with asbestos exposure, in general, yeah.
Your contention, if you're so content to contend that Lloyd did not suffer exposure to asbestos with his work with talc that you supplied, yeah, I can speak to why I would not think that would be the case. Your corporate history, I'm probably not the best person for that.

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MR. WELCH: No, Mr. Vanderbilt was offered for that.
Q Okay. Thank you.
A And your document retention policy, I'm not, but --
MR. WELCH: Mr. Vanderbilt was also offered for that.
Q Okay. All right. Now, there's also a document request --
A Uh-huh.
Q -- with that notice, and let's focus for the time being on categories that relate to the ones that you're the person most knowledgeable on, which they're identical. We're talking -- we would be talking about starting at category number nine all the way through.
But before we get to that, there's a stack of documents that I have that counsel produced, Hawkins & Parnell produced to me. Do you have those there?
A Yeah. They have little yellow tags, and I -- they start --
MR. WELCH: No, no, not that. That's a different group. He's talking about the ones that we served yesterday --
THE WITNESS: Oh.
MR. WELCH: -- that you and Peter went

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through.
THE WITNESS: There's a couple missing that I requested be sent, but --
MR. LEVIN: Okay.
MR. WELCH: -- he does have the majority of those, and I'm not sure my copy was complete because it came in e-mail and you know how that goes?
MR. LEVIN: All right. Well, we'll try and sort that now.
BY MR. LEVIN:
Q Let me ask this question: You're being produced today also as the custodian of records for Vanderbilt with respect to these categories of documents, do you understand that?
A I'm certainly the custodian of all the health and mineralogical data that pertains to the talc. All other documents I would not -- I don't think I'd be viewed as a custodian, but certainly for the occupational health aspect of the tremolitic talc, the whole history of it, all the health studies, all the mineral studies, all of that, I'm it.
Q Okay. So you are the custodian of records for the health and mineralogic documents pertaining to talc for Vanderbilt?

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A That's right.
Q Okay. First question: The documents that were produced by counsel -- and counsel if you want to agree to this, it's fine. Are they all documents that were within the files of R.T. Vanderbilt and are business records for the purposes of authentication purposes?
MR. WELCH: They are records that were contained within the files of Vanderbilt. Some of them, as you know, are copies of articles from the medical and scientific literature. And I mean, to the best of my knowledge, they are accurate copies, but they were not produced by Vanderbilt in the course of their business, if that's what you're asking.
MR. LEVIN: I'm not so much concerned about those. I'm more concerned about him being the custodian for the actual Vanderbilt records that they either generated or received in the course of doing business, and not having any issues in terms of the admissibility of those documents, at least for authentication purposes.
THE WITNESS: Oh, okay. Well it's -- maybe this will help you. I mean, I do make a distinction in that, you know, in that my job here

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is the risk, corporate risk manager, so I'm responsible for occupational health and safety, for environmental, for product risk, so I have a department, and so to the extent that issues concerning New York State tremolitic talc are linked to occupational health issues and mineralogical issues, all of those types of documents, I am the primary keeper of and I'm probably most familiar with.
BY MR. LEVIN:
Q Okay.
A Sales records and who sold what to who, and maybe early correspondence, you know, prior to my time, I couldn't -- I'm not really sure. I probably have seen most of the key documents or correspondence that, you know, over the years people have raised and brought to the table --
Q Okay.
A -- so I'm somewhat familiar with most everything, but my main thing is health, safety, environmental and the mineral stuff.
Q Okay. Let's turn then to category number nine, okay?
A Okay.
Q And that asks for all documents containing

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information relating to the composition of the talc you sold, meaning Vanderbilt sold, between the years 1960 and 1985. Let me ask you this: As the custodian for the health and mineralogic documents produced today, have you produced today to me all such documents that Vanderbilt has in its possession?
A My answer is, I don't know. I suggested that the entire, you know, chronology of all the --
MR. WELCH: We were limiting it from '60 to '85.
Q Can I have the rest of his answer, please?
A Well, we have a -- I have a complete chronology, you know, by date, you know, from the -- current all the way back, of every document that's linked to mineralogical analysis of our talc, at least that I've ever seen or was able to have seen, and I always recommend that always be provided.
Q Okay. And where are those documents located?
A Well, I have them in a file, but I believe they're also in electronic form.
Q Okay. And where is the physical file?
A The physical file is in my office.
Q Okay. And in connection with this document production request, did you yourself go through that file and pull out all of the documents containing

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information relating to the composition of the talc that Vanderbilt sold between 1960 and 1985?
A Well, I'm familiar with the -- with the analytical reports. They're all --
Q That's not my question. My question is, did you yourself, Mr. Kelse, go through that file and pull out production all of the documents containing information relating to the composition of the talc Vanderbilt sold between 1960 and 1985?
A No.
Q Okay. I have some documents that have been produced that relate to category nine to that subject. Do you know who it is that compiled those documents?
A It would be --
MR. WELCH: Those were prepared by the attorneys in consultation with Mr. Kelse. Which documents are you referring to?
Q Well, I've -- we've asked for documents for category nine. I have a stack of documents, some of which are arguably responsive to category nine, but based on Mr. Kelse's answers to these questions, I don't think that I have all of them. But I'm just trying to find out who it is that selected the documents that I have.
A Oh, okay. I see. I'm looking at the

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documents now. I notice that they, you know, they date from '85 back.
MR. WELCH: And you did provide those documents to us?
A Yes.
MR. WELCH: Okay.
Q While you're looking through those documents, keep in mind this question that I'm going to ask you so you don't have to do it twice. I want to know if these are all the documents from your file that you told us you have related to request number nine, which asks for information related to talc that you sold, that Vanderbilt sold between 1960 and 1985, and whether there are more contained in your file?
A There are -- there are other reports I think that predate '85.
MR. WELCH: We have -- we asked him to provide us with a -- the documents that were responsive to that request that dealt with the content, the talc -- content of the talc sold between '80 -- between '60 and '85, and those documents are certainly responsive to that.
Q Okay. I'd like to see the other documents that haven't been produced. Let me ask you some foundational questions.

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How many documents, in your estimation, are there in your file relating to the composition of the talc sold by Vanderbilt between 1960 and 1985, the mineralogic composition?
A Oh, I think that's -- the lion's share of the analysis actually has been done in more recent years, the last ten or fifteen years. I mean, they're -- a really heavy duty good analysis has been done in those years, and the earlier reports are not, you know, as thorough or as complete. These reports that you do have from Dr. Wylie actually are pretty good reports, in the sense that they describe very correctly the actual composition of this complex talc, this complex mineral mix, and it also -- also these reports, which were recommended by me to be sent to you go to some length to explain why this talc is so often confused by laboratories, what the problems are, what the issues are, what the analytical criteria difficulties have been. I generally am in favor of giving, you know, all of the stuff.
Q Okay. Well, So am I, which is why I asked for all of this stuff, and the stuff that we have may or may not be fairly representative or helpful, but that's not really my point.
As a lawyer representing Mr. Haanstra, I'd

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like to look at all of the stuff in that file, so I'd like it produced. And we can do whatever we need to, convenience wise, to make that happen, but can I have -- since you are the custodian of records, can I have your agreement to produce the file, the whole file that you yourself say you recommended must be produced?
MR. WELCH: You file what you think you need to file, and the lawyers will determine his answer to that question.
MR. LEVIN: I don't understand that answer. I've already filed, and as far -- we're sitting here for a deposition of the custodian of the records. I've asked for documents. This is the first category I've inquired about. He's told me there's no documents responsive to this request and that he has recommended that the whole file be produced, and that we do not have a comprehensive set of those records, so I'm asking you if you will agree to produce those records since we're entitled to them and we've asked for them and he has them?
MR. WELCH: All right. I'll review that and get back to you on it.
MR. LEVIN: What does that mean?
MR. WELCH: Just exactly what I said. I

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will review that file when I can and see if we can provide that to you.
MR. LEVIN: And see if you can?
MR. WELCH: Yes.
MR. LEVIN: Is there some reason that you wouldn't be able to?
MR. WELCH: I have not seen the entire file and I don't know.
MR. LEVIN: Well, why don't you have a look through the file and see if you think there's anything that for some reason shouldn't be produced. I have no problem with that, but assuming the documents are of the character that he is describing and he's recommended that they be produced, we'd like to see them and we'd like to see them pretty fast. Can you tell me when it is you'll have a chance to look through those?
MR. WELCH: By next week.
MR. LEVIN: All right. You know, hopefully I won't have to go to the judge for this, but next week is kind of vague. Can you pick a date by which you will have those documents?
MR. WELCH: A week from today.
MR. LEVIN: All right. Now I'm going to

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reserve the right to continue his deposition on the subject of those documents when I get them.
BY MR. LEVIN:
Q Number ten, all documents containing information relating to the asbestos content in the talc Vanderbilt sold between the years '60 and '85. Do you have documents like that as part of the universe of records that you are the custodian of as the custodian of health an mineralogic documents?
A Well, the analytical documents that I have, you know, are, for the most part, addressing the issue as to whether or not there's asbestos in this talc or not.
Q So that would be the same as we just discussed?
A Yes.
Q Okay. Now, there's one thing that you said that I need to follow up on. The dates here were selected because these are the years between '60 and 1985 that the plaintiff claims to have been exposed to Vanderbilt talc. But you've told me that there are documents, and you think actually better documents, superior documents, however you put it, also that are dated, the documents and the analyses themselves are dated after 1985. That's just a preface. Do you

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remember telling me that?
A Yes.
Q Okay. It strikes me, though, as a mineralogist that some of the documents and the analysis that were done after 1985 still might be pertinent to the composition of the talc sold between '60 and '85. For example, you might have subsequently, after 1985, analyzed talc that was still vintage circa prior to 1985 that was sitting around somewhere, and you also might conclude as a mineralogist that since it came from the same mine, same vein and same geological area, that the mineralogic analysis that you've done after 1985, it does provide pertinent information relating to the composition of the talc sold prior to 1985. Are you with me on that?
A Yes.
Q Okay. Do you believe that you have documents, that although dated after 1985, contain information which you believe is relevant to the composition of the talc that you sold, Vanderbilt sold between 1960 and 1985?
A Absolutely.
Q Okay. Can you include those documents also in the documents that you provide to counsel, which he is going to review and provide to me within a week?

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MR. WELCH: I will be happy to look at those, too.
Q And just for the record, why it is that the documents that may have been authored after 1985 provide relevant information relating to the composition of the talc sold by Vanderbilt between 1960 and 1985?
MR. WELCH: He didn't say it did. He said it may have.
Q Okay. Tell me why it may have?
A I'm sorry, could you repeat the question?
Q Okay. Tell me why it is that documents authored after 1985 may still contain information that may be relevant to the composition of the talc Vanderbilt sold between 1960 and 1985?
A Yeah, well, certainly in a couple of cases there was analysis of talc samples that had been used and animal studies that were done prior to 1985. Those samples have been around and are still, you know, some of them are still available. They've been analyzed, and there are some samples that probably predate '85, but the key thing is that -- is that the product itself, the tremolitic talc that's state mined in upstate New York has a unique mineral blend that has been consistent over the years; otherwise, it wouldn't

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be -- you know, be able to be used for the same purposes, so we have quality control programs and parameters, like oil absorption and other parameters, that if they changed, the mineral composition would have to change. And so to the extent that these products have provided the same characteristics, they are the same mineral blends.
Q Okay. So talc -- Vanderbilt talc coming from the same two sources analyzed after 1985 would have the same mineralogic characteristics as Vanderbilt talc coming from those same two sources prior to 1985?
A Yes. The talc is very unique. It's been described as an unmistakable fingerprint. No other talc is like it, and it's been that way since it was -- to the best of my knowledge, since we began mining, Vanderbilt began mining.
Q Okay. And if I looked under a microscope, what would -- what would the characteristics of that unique fingerprint be that would separate the Vanderbilt talc from the rest?
A Well, do you have a copy of our material safety data sheet?
Q Yes.
A Okay. It's essentially as described. At one time we actually had a composite material safety data

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sheet for all of our talc grades because they all had the same mineral blend --
Q Uh-huh.
A -- the only difference is that in some cases there may be a little more talc then there is amphibole material. In other cases, the particle size is a little larger or smaller. So, for example, a product called Nytal 100 is the same, essentially, as Nytal 400, except 400 is a finer line, you know, finer particle grind.
Q Okay.
A And so --
Q Are you telling me, though, like, for example, if I look at the material data sheet under the ingredients section for one of those talcs, let's say Nytal 100, that with reference to the percentage range of the various mineralogic constituents listed in the ingredients, that I can then identify that talc as Vanderbilt talc and that no other commercial talc would have exactly that mix?
MR. WELCH: I object to the form of the question. He can't tell you what he can identify.
Q All right. But you're telling me that with reference to the material safety data sheet, that there

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are things contained within that sheet that are emblematic signatures, if you will, of Vanderbilt talc that distinguishes it from other talc. And could you just direct me to which part of the material safety data sheet that is?
A Actually, I was just looking through some of the documents that Bruce brought with him this morning that I guess were sent to you. There is a -- it says an old material safety data sheet and it has a date of May 1, 1975.
Q I see it.
A You see it?
Q Yeah.
A Okay. And there's another one, 1981.
Q I see '81 and '83 --
A Right.
Q -- and '80. I see four.
A Right. Okay. Well, you notice, and again these are before my time, but this is still the case to this day, if you look at the four components listed there, you see the percentages?
Q Yes.
A Okay. You see that these -- these are actually composite material safety data sheets, so for like the one for '81, Nytal 99, 100, 100HR, and then

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there's, you know, another one for '80. You see a range of percent --
Q Yes.
A -- and to this day, that's -- that's pretty much the range of all the talc products that we sell, so we always give the composition as being talc, twenty to forty percent, and it can vary in that twenty to forty percent; non-asbestiform tremolite, you know, amphibole cleavage material, forty to sixty percent; serpentine, which is in this case antigorite-lizardite, A-N-T-I-G-O-R-I-T-E dash L-I-Z-A-R-D-I-T-E --
Q Uh-huh.
A -- fifteen to thirty percent --
Q Uh-huh.
A -- non-asbestiform anthophyllite cleavage material amphibole, one to five percent and very little quartz; one percent if it can be detected at all. Typically it's very hard to detect.
Q Okay.
A And that is it. I mean, all of our grades of talc that are in those ranges.
Q Okay. That's what I was trying to ask you. So it's with reference to section two that a person can identify the constituent ingredients by percentages that are unique to Vanderbilt talc?

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A Yes. And to my knowledge, there's no other talc with that combination.
Q Okay. Now, are there other material data -- material safety data sheets within your records, other than the five that have been produced to me?
A Those five are obviously the material safety data sheets that would have been in -- out there at -- you know, prior to 1985. Subsequent to that, you know, after 1985, we have, you know, changed our -- updated our material safety data sheet. We have a specific MSDS for each individual talc grade now, and -- you know, so that's about the only change we've made. But essentially, they're very similar. You know, the key items are similar, the same.
Q Now, in the quality control process, is there testing, mineralogic testing performed to determine whether the talc that's coming out of the facility there sort of has this constituent component profile?
A Well typically, you know, in a mining operation like this -- I mean, obviously we will do what is known as a bore sample, where geologists will go and try to determine the mineral composition in various areas of the mine, and essentially we're trying to find these blends. We'll find areas where there's more talc, areas where there's more amphibole material

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and so forth. And these are mined and put in separate hoppers or boxes, if you will, and then these hoppers or boxes are drawn from at certain percentage range -- let's see if you want talc at twenty or forty, you take ore that has more talc in it and you blend it with for amphibole, and then -- or more serpentine, and all of that then is put through mills and ground to certain sizes; dictated, you know, by that product that we're trying to make in regard to the percent of each mineral component and particle size.
And once it's ground, it is taken to a quality control lab and it's tested for certain things. The main one is oil absorption. And if you don't have the proper blend of minerals and the proper size, you will not meet the specs, you know, for oil absorption and color and there's a couple other criteria.
Q Okay. Let's back up a second here. There are two mines, correct?
A Vanderbilt opened in 1948 with an underground mine and operated only out of that mine until 1974, and then it acquired International Talc and then drew ore from, and to this day draws ore from a mine known as the Arnold Pit, which is adjacent to the underground mine. We're talking maybe about a half a mile to the west.

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Q And for the record, the name of the underground mine is?
A We call it just Mine One.
Q Okay. And the Arnold Pit and Mine One are adjacent to each other, separated by what, a half a mile?
A Yeah, if that, and most of the ore -- and in 1995, we closed the underground mine and are now just all above ground --
Q Okay.
A -- and it's all part of the same ore body.
Q What county are they in?
A That's in -- I don't know, what is it? Is it Jefferson or -- no, that's right, it's St. Lawrence. It's the one to the north.
Q St. Lawrence County?
A Hold on, let me make sure I get it correct, because it's important. We are in -- let's see. We are in St. Lawrence County.
Q Okay. So we have the two mines in St. Lawrence County, Arnold Pit and Mine Number One. And during the mining operations we take what are known as bore samples to -- on the spot trying to determine of the various sort of geographic options within the -- within the vein there, what comes closest to the

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company's specifications for extraction, correct?
A Yes, except these bore samples are not taken, you know, at the time or at the spot. These bore samples sometimes have been taken, you know, years before and used by the geologist to plot the ore deposit.
Q Okay.
A So they sort of have a map, you know, almost like they go down under the ground that already lays out where the ore deposit is, and that would -- some of that was established, you know, in the '40s and '50s, even earlier than that.
Q So they do like some sort of geologic mineralogic survey initially and sort of map out where the most appropriate bore samples sort of came from and they use that sort of as the design for where to mine?
A Yes, exactly.
Q Okay. And this -- you say it's all from the same ore vein. Is there a name for that particular vein there?
A Yes, there is, but I would defer that, you know, to a geologist. And there is a history, I think, written on that region and there are different ore -- ore sections and veins. It's not one homogeneous rock, that's for sure.

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Q Okay. And are these bore samples maintained as records somewhere within Vanderbilt?
A Some are kept at the mine. I don't believe we keep any in Norwalk.
Q Okay. That's where your office is, in Norwalk?
A Yes.
Q But -- so there may be a record, vis-a-vis the bore samples taken from these two mines at the mine facilities themselves?
A There could be. I can't say for certain.
Q Okay. And if there are, those would be documents that would be responsive to my request nine and ten?
A Well, bore samples.
MR. WELCH: We object to that on the grounds that he would not be exposed to the ore on the site or at the mine or in the mill.
Q Well, that might run to the weight, but this would still give us some information relating to the composition of the talc.
A Well --
Q Sir?
A Well, you know what a bore sample is, right?
Q Sort of, yes.

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A Yeah. Sort of like -- I guess if you can picture, you know, you just take like a pipe and you stick it down in the earth and then you pull the pipe out and then you take that cylindrical material out of that pipe and, you know, the distance down and then you see the various layers, you know, the geologic layers and you can determine the mineral composition by taking like bulk samples or samples of some of those layers. There is that --
Q Okay.
A There is that.
Q Well, that's what I'm asking. Why wouldn't that be information relating to the composition of the talc sold by Vanderbilt?
A Well, it's a little bit more of a QC, and I'm not so sure -- like, for example, the analysis may just be identified like serpentine versus amphibole.
Q Well, we don't know because you don't have the records, neither do I.
A Yeah.
Q Who has the records?
A Well, the facility would have the geologic records of the survey, the survey records, that type of thing.
Q What's the name of that facility?

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A Well, it's the Gouverneur Talc Company. Gouverneur, G-O-U-V-E-R-N-E-U-R.
Q And these would be geologic surveys of the area where the two mines are located?
A Yeah, and I think there's some published papers on that.
Q Okay. Do you know the person there that's the custodian of documents there?
A Well, the ultimate responsibility would be the plant manager, and his name is Dana Putnam, P-U-T-N-A-M, D-A-N-A, Dana.
Q And do you know where he resides?
A Yes, he's in -- at the mine in upstate New York, Gouverneur, New York.
Q Have you spoken to him in connection with your efforts to become the person most knowledgeable at Vanderbilt with respect to categories nine and ten?
A I've spoken to him about records that pertain to the geology and history and that sort of thing. To that extent, I have, yes.
Q Okay. And based on those conversations, would you agree with me that there are or may be documents at the Gouverneur Talc Company in the custody of Mr. Putnam which relate to the composition of talc sold by the Vanderbilt mines between '60 and '85?

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A What they would relate to is the ore body, which is not necessarily the product as it goes out the door.
Q No, I understand that. I understand. We're going to get to that in a second, but it is a building block in understanding the nature of the composition of the talc sold by Vanderbilt between '60 and '85, the nature of the ore body it came from.
A Yeah, depending on how you go at it. I mean, from my advantage point, the key analysis would be of the product, final product itself as it's sold.
Q Okay. Now, the bore samples go to some quality control place?
A No, the bore samples just help direct the mining --
Q Okay.
A -- and then the product as it's processed, you know, through the plant, the mill, samples are taken and those samples before they're bagged -- it's bagged and given a product label are taken to the -- the QC lab for some very basic tests, make sure that they meet the quality parameters such as oil absorption as a key one that I mentioned before.
Q Okay. So backing up. So the mine is ored, and other than these bore samples, there's no other


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sampling done at the mine?
A Well, there's certainly a lot of -- for occupational health purposes, there's myriad air samples that are taken by myself, by mine safety and health administration, you know, by groups that have studied that mine over the years. There's lots of data. It's probably the most studied mine in the world.
Q And where would the documents with respect to the air sampling at those two mine facilities be located?
A They would actually be part of what I refer to as the mineral, you know, analysis and characterization of the talc, all of that data.
Q And physically would that be with you or at the facility under the direction of Mr. Putnam?
A That would be with me.
Q Okay. And do you have records reflecting air sampling done at the mine itself?
A Yes. It's all part of that whole package.
Q Okay. And does that air sampling tell you the level of talc; tremolite and fosilite and serpentine, in the air samples taken at the mine?
A The samples, air samples have been taken historically over the years and continue to be taken on

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and off, cover the following areas: Total dust, that's everything --
Q Okay.
A -- respirable dust, that's all the dust that's less than ten micrometers in size --
Q Okay.
A -- whatever it is. Crystalline and silica, whenever we're able to find it --
Q Okay.
A -- in an air sample, and there have been what you call probably getting fiber samples, which are simply samples that collect on an open-face filter, and then you just measure the particle lengths and widths. And those are generally expressed. The others are expressed in gravimetric milligrams per cubic meter, you know, total dust, respirable dust, crystalline and silica. Fiber samples are expressed in fibers per CC, cubic centimeters of air.
There have been -- all of the air samples are not, you know, to determine whether there's asbestos there or not, but there certainly has been a lot of the sampling done, some by myself, some by -- most by mine, safety and health administration, which is the agency that regulates all mines including our own. They periodically take samples. We've had studies, as you

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know I'm sure by NIOSH, who has taken samples. The New York State Health Department way back when, I think it's probably taken some samples. All of this, whatever material we have I keep, and I never discard it.
Q Okay. And I think that those air sample records are relevant.
A Oh, I do, too.
Q Okay.
MR. WELCH: I'll object. Wait. Wait a minute. Wait a minute. Let me put an objection on the record.
MR. LEVIN: Sure.
MR. WELCH: I believe that they are irrelevant to this case. There is evidence that Mr. Haanstra was ever present at any facility where air monitoring was done, therefore the records are totally irrelevant to whatever --
Q Au --
MR. WELCH: -- exposure that Mr. Haanstra claims.
Q Au contraire. It's your contention, and I think the witness' contention that the ore that came from those mines contains no asbestiform fibers.
A No, no, the ore that comes from those mines

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contains no asbestos.
Q Fine. And that contention would be either supported or refuted by the air sampling documents, and to that extent they're relevant.
MR. WELCH: What does that have to do with what Mr. Haanstra was exposed to?
Q Au contraire. Vanderbilt is contending that their ore contains no asbestiform fibers and then the witness said no, we're not, we're claiming they contain no asbestos. And I said that -- and I'll say it again maybe a little differently, that either way, those air sampling samples are relevant because they either support or refute the position of Vanderbilt with respect to the asbestos and asbestiform content of its ore and I would ask that they be produced. So, sir, is there some reason as the custodian of records that you can't produce those records?
MR. WELCH: On advise of counsel he will not.
MR. LEVIN: He won't? So you're refusing --
MR. WELCH: Not until I've had a opportunity to review this.
MR. LEVIN: Excuse me?
MR. WELCH: Not until I've had an

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opportunity to review this.
MR. LEVIN: Well, I would ask those records be provided to counsel as among the records that he's going to review and produce to me, assuming that there's not an issue with any particular document next week, is that agreeable?
MR. WELCH: I will attempt to do that. I have no idea what volume of stuff we're talking about. This was not included in the materials you sought, anything to deal with air samples, air monitoring or anything --
MR. LEVIN: Let me point out --
MR. WELCH: Let me finish my objection.
MR. LEVIN: Sure. I didn't know you weren't finished.
MR. WELCH: It was not asked that we produce this. We produced the materials that were relevant to the notice to production which you filed. There was no indication that you were seeking any recovery for exposure that Mr. Haanstra may have had at any location where Vanderbilt has done air monitoring or air sampling.
MR. LEVIN: Okay. Counsel is smart enough to know that I'm not claiming that

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Mr. Haanstra was exposed at the mine, and counsel is also smart enough to know that the air sampling records do speak to the issue of the mineralogic content of the Vanderbilt talc, and as such, are relevant.
I would like to point out and make a record, and I have not been jumping up and down about this, but I did serve a document request over -- I guess we're coming on -- February, March -- coming on two months ago on January 27th, 2006. I received late last night a stack that is no more than an inch of documents that somebody has abstracted from the universe of documents that this records custodian, as the custodian of health and mineralogic documents for Vanderbilt has.
I am learning through the simple ABC's of going through the document request, and we've done only two categories here, that there are a number of documents that have not been produced pursuant to this notice and that I am entitled to. And I'm hearing the complaint that now, at this moment, counsel doesn't know how long it will take to review all those documents, and that, I would submit, is a process that should have began when

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the notice was served in January.
MR. WELCH: Well, I respectfully disagree with you.
MR. LEVIN: Well, all right.
BY MR. LEVIN:
Q Sir, can you tell me when it is that you went through the documents in your document repository with respect to the health and mineralogic documents and attempted to ascertain which documents were located there that were responsive to this document request that was served on January 27, 2006?
A Well, I discussed or I got a call and discussed with our attorneys what documents were going to be sent, and I made recommendations, and I think I pretty much articulated, you know, what my recommendation was before.
MR. WELCH: I'm going to object to any further inquiry along these lines as being attorney/client privilege.
MR. LEVIN: Well, you've tendered him as an expert, if you may have noticed, so you waive that.
BY MR. LEVIN:
Q My question was when this happened, sir?
A Well, it was yesterday.

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Q Okay. So yesterday was the first time you yourself endeavored to determine which documents, among the health and mineralogic documents for which you are the custodian, were responsive to this document request?
A Yes.
Q Okay.
MR. WELCH: That was in respect to this case.
Q And you made a recommendation to counsel as to which documents to produce, correct?
A Yes.
Q And what was your recommendation?
A Well, I feel that our -- the science base is significantly -- you know, is very significant and is very strong, and I generally tend to want to provide everything.
Q You wanted to provide all the documents, correct?
A Well, certainly those that pertain to health studies on this talc and those that pertain to the mineralogy of that talc.
Q And --
A Oh, dear.
Q Hello?

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A Hello? Can you hear me?
Q Yeah, I can now.
A Okay.
Q But we did not get all the documents that you recommended that be produced, correct?
A Well, I think on advisement of counsel, there was an issue of cutoff dates. I think that's -- that's -- that's -- that's their call.
Q But we didn't get all the documents that were relevant to health and mineralogical issues that were authored between '60 and '85, did we?
A I only saw -- I only saw two health studies that were not in the package that I feel were pertinent, so I think that was complete.
Q Hello?
A Hello? Can you hear me?
Q Yeah. I don't know why that's happening. Okay. So there were two studies pertinent to health issues that were not produced?
A In my -- in my view, yes.
Q Okay. And which were those?
A Well -- and this is good because maybe you did get them and we just didn't get a copy. The one that I think that is most important, is the most up-to-date, most complete mortality studies of our

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miners and millers, and that was -- that was entitled Mortality Among Workers at a Talc Mining and Milling Facility, Honda, H-O-N-D-A, Annals of Occupational Hygiene, volume 46, number seven, pages 575 through 585, 2002. That's -- I think that's important because it's the most complete study there is. And there is a cell study entitled Mineralogical Features Associated with Cytotoxic and Proliferative Affects of Fibrous Talc and Asbestos on Rodent Tracheal Epithelial and Plural Mesothelial Cells. That's authored by Wylie, Mossman, Skinner and Marsh, and that appeared in Toxicology and Applied Pharmacology, 147; article number T0978276, 1997.
Q I don't immediately recognize those, but I'm going to ask that those be produced and that I reserve the right to ask questions about them when I get to see them.
A Okay.
Q But I do have this question. You seem to like those two articles and they may be fine articles. Are there any other health-related documents in the depository for which you are the custodian, related to health and mineralogic issues that have not been produced that I'm looking at today?
A Well, in terms of the -- in terms of the

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health studies, you know, I always put these things in categories. The top of my category list is health studies that are specific to Vanderbilt talc. The two that I just gave you deal specifically with Vanderbilt talc or components of Vanderbilt talc.
Q Okay.
A There's a -- the next study in terms of chronology was published in 1992, which I believe you have a copy of, and that's the case control study by Gamble, G-A-M-B-L-E.
Q Okay.
A Do you have that --
Q Well, right now I'm interested in the documents that you guys produced, and I'll skim through it.
A That was produced, I believe, okay?
Q Let me pull it. First document is just the material data safety sheets, couple interoffice memorandum, and a sort of a thing that Vanderbilt wrote about talc. Okay. Go on. I'm going to skim through while you talk.
A Okay. You should have a copy of a paper by -- it's called Similarities in Lung Cancer and Respiratory Disease Mortality of Vermont and New York State Talc Workers --

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Q I think I have that.
A -- by Lamm.
Q Yeah, I've seen that. I have that.
A Okay. You have that? There is a second paper by Lamm entitled Analysis of Excess Lung Cancer Risk in Short-Term Employees.
Q Okay.
A You have that?
Q I think I may have.
A You have that?
Q Okay. I got Gamble.
A Yeah.
Q Got Lamm.
A Yeah.
Q Go on.
A Okay. There is a another one by -- well, The Mortality Experience of Upstate New York Talc Workers by --
Q Are you just identifying the ones that are in our stack now?
A Yeah, the ones that I believe you got.
Q No, I'm going to go through the ones that are in our stack. What I'm trying to find out, what are those things that you haven't produced that you're aware of? And you told me about two.

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A Yeah. So far, as far as the human health studies, that's what we're talking about right now.
Q Okay. Go on.
A And then this one by Stille and Tabershaw called The Mortality Experience of New York State Talc Workers, dated 1982.
Q That's in the stack that you produced?
A Yes, I believe so.
Q All right.
A You might want to check it.
MR. WELCH: Should be anyway.
A Should be.
Q I'm happy with the stuff that's in this stack. I'm trying to find out what's not there.
A So am I, so --
Q So you've identified two human health studies that you believe that are not in the documents produced today. Are there any other --
A Let me clarify that. Let me finish.
Q Sure.
A The first human health study is the Honda study, okay?
Q Yeah.
A The second human health study is the Gamble study. Put Wylie and Mossman aside for the moment.

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The third and fourth are two Lamm studies. Then there's Stille and Tabershaw, right?
Q Okay.
A Okay. And then not in the package there is a NIOSH technical report --
Q Okay.
A -- that's dated 1980 --
Q Okay.
A -- which I would expect you would have already.
Q Okay.
A And that's it for the human health studies, okay? Now, the next category of health studies are animal studies.
Q Okay.
A And there are two animal studies that dealt specifically with Vanderbilt talc.
Q Okay. Were they produced in the stack?
A Yes, they were. The first one of those is a study by William Smith.
Q Okay. Now, you've seen those in the stack so these are the ones that you have.
A I have the William Smith. I think I saw a couple of his -- it's actually talking about one study, okay?

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Q Okay.
A And then the second animal study that's pertinent to Vanderbilt Talc is a study, the famous study by Stanton.
Q That's the same hypothesis document?
A Exactly. Actually, that's dated -- you know, he wrote several, but the one that I'm looking at is 1981.
Q Okay. I have that.
A You have that? And attached to that is an affidavit from Professor Wylie from the University of Maryland.
Q Yeah, I've seen that.
A Okay. And the reason that's attached is to identify talc six and seven.
Q Okay.
A Okay. So that's the two animal studies that's specific to Vanderbilt Talc, okay?
Q Yes.
A Now, the other study that I did not see in the pack is a cell study, and that's the one that I gave you, Wylie and Mossman and Marsh.
Q Okay.
A And that is -- that is, to the best of my knowledge, the only health studies; human, animal, cell

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that are specific to Vanderbilt in regard to -- well, human are in terms of mortality.
Q Okay. And that document wasn't produced.
A Which one? The cell study wasn't and the first and the most up-to-date mortality was not, I don't think, unless you have it and we just did not get it here.
Q Okay. And you would agree with me that these are documents that are pertinent to the issue of Vanderbilt talc and health?
A Yeah. I think all documents are. I think everything that's been produced on this issue is pertinent.
Q Okay. So could you, in the documents that you give to counsel, produce those as well?
A Well, you have them all except for those two that I mentioned.
Q I'm talking about those two.
MR. WELCH: Yeah, we'll give you those.
Q Thank you. And I'm reserving the right to ask you questions about them.
You said something earlier I want to follow up on. You said that it was Vanderbilt's position that the talc from the talc mines do not contain asbestiform fibers, and you corrected me and said that they do not

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contain asbestos, do you remember that?
A Yes, I do.
Q Okay. Tell me what you meant by that?
A Well, the easiest way for me to do that -- you do have a copy of a report. It's called Reported Investigation by N. Wylie, dated 1983.
Q Yes.
A You probably have not had a chance to read through the report.
Q Well, no, last night I tried to the best I could.
A Okay. It's thick and it's complicated.
Q Well, I read everything to some extent.
A All right. Okay. Well, I'm calling your attention to this one for a reason. One of the reasons I'm calling your attention to this one, it's one of the more detailed analytical reports on this talc.
Q All right. Let me see if I can find it while you talk. I'm listening.
A And this report goes to some length to discuss the various mineral compositions, you know, the various components, the amphibole, the serpentine, the talc, talc fiber, all the components in this talc. And it describes -- it shows pictures of them, it shows how you distinguish these things, and it -- it -- it gives

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you one of the best descriptions of the actual composition of this talc. And this description has not changed, you know, to this day, and it -- it -- you know, I can -- we will provide all -- lots of other reports that -- some of them are more detailed in terms of transmission electron microscopy. We've had -- there's been lots of research projects done on this to even, you know, even look at this stuff more thoroughly. But at the end of the day, I think you'll find when you do see all these documents that this one -- this paper, in 1993 --
Q From the University of Maryland?
A Yes -- you'll find it's pretty darn accurate, so when you ask me my question, you know, the answer to the question is, in the -- in the talc composition, in the twenty to forty, thirty percent talc that I told you about --
Q Yeah.
A -- there's a few percent of what's known as talc fibers. These are pretty rare, but they're rare. In fact, they're probably more present in our talc than any other talc, although Professor Wylie says if you look hard and long enough in any talc, you can usually find one or two of them. And they're the mineral talc, but they are actually -- you know, they're not plated,

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they're actually elongated.
Q The fibrous talc?
A Yeah, and that's why they're called fibrous talc. Some of the fibrous talc, not all of it, but some of it, and this is explained in this paper that you have, are inter growths, what's known as transitional or -- or some mineralogists have called them biopyriboles. And there's some discussion about what the correct terminology for these should be, and it's somewhat of a mystery to this day how these mixed particles actually evolved, you know, geologically, so they are -- have been described as sort of a mineralogical curiosity that a lot of mineral scientists like -- like to look at because they tell them something about the way minerals are formed, you know, over thousands of years and so forth.
So, you know this is one of the reasons why this talc is so heavily studied. But -- and some of these -- some of these transitionals -- actually -- actually more than with pure talc than the transitionals, some of them have what appear to be some bundling, where it looks almost like a bundle of fibers. And that crystal growth habit is described by mineralogists as asbestiform. That is unique crystal growth habit.

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Most minerals form in random fashion, and when you crush them up you can get some that are sort of vesicular and long, but they're really -- you know, not really true fibers, they're just chunks of different sizes. But true asbestiform mineral fiber is very rare, so we have, you know, very, very tiny amounts of these that can be found in the talc. But they're not any of the six minerals that are regulated as asbestos. In fact, they're something like a hundred minerals that can form that way. Some of them are water soluble. Some of them are -- like aryonite, for example, has been shown to pose the same health risk as asbestos and others have not. So the term "asbestiform" is not a synonym for asbestos. Asbestos is a generic or commercial term that's applied to these six minerals that are regulated as asbestos, because these six are the ones that have shown as the health risks.
And so you don't use these words interchangeably. They don't mean the same thing. All the six regulated minerals, all of them are asbestiform and they have to be in order to be asbestos. But everything that's asbestiform is not asbestos. And that's a long-winded description, but it's nothing that you can't read in this paper that you have already.

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Q I got it. I understand the two. What percentage that a few percent of the talc fibers, what percentage of the Vanderbilt talc is fibrous talc asbestiform fibrous talc of the type that you just described?
A Uh-huh. Well, you know, there's somewhat of a range, and the range would be anywhere from somewhere non-existent. It usually averages out to about one percent and of that one percent, about maybe .05 or something like that, you know, might fit into that category of asbestiform.
Q .05?
A Something like that, yeah. It varies a little bit, and you can -- I have never been able to find any of them on air filters, they're rare, but you can find them in the bulk material.
Q Okay. So just so we're clear, in the range -- on average, one percent of the talc has this -- has this fibrous talc on it?
A Yeah, and some of that, it's not all the same. Some of the talc fiber is -- it looks like a ribbon.
Q Okay.
A Some of like, it looks like a ribbon.
Q Okay.

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A Some of it looks like a rod --
Q Okay.
A -- and some of it -- some of it, you can see pictures of it in that report that I directed you to in '83.
Q Okay.
A And she -- she goes to some length to explain this because they are extremely unusual. They're not things that, you know, the average lab ever sees.
Q Right. They're probably so unusual that the health affects of them haven't been studied in any long term epidemiological studies?
A Well, I just told you that we had like five mortality studies of our talc workers. I don't know of too many work populations that have had that many health studies done on them, so I would disagree with you.
Q Okay. We'll get to that in a second. .05 percent of the fibrous talc is, in your view, asbestiform?
A Well, I told you it was a range. It's a low percentage.
Q Okay. Let me skip to another category here for a second. If you could look at categories sixteen and seventeen, which ask you for documents relating to

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Workers' Compensation claims that Vanderbilt may have received relating to claims of asbestos-related disease --
MR. WELCH: We did not produce any, since, during the time frame, there are none.
Q This is not related to any time frame, and I've heard there are some, so I'd like to ask him about it.
MR. WELCH: No, we're not going into that. It's outside the time frame. It's not going to show notice of any condition.
MR. LEVIN: Well, it may or may not, depending on what the claims say and what evidence is within the claimed documents themselves, vis-a-vis the issues we've been talking about having to do with talc content and ability to cause asbestos-related disease.
And let me give you an example. If you happen to have a talc worker, talc miner that had no other employment and it was proven that they had no other employment, and that person got mesothelioma, and they did a lung analysis and found asbestiform talc and tremolite and all of rest of that in there, that would be relevant --
MR. WELCH: No.

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MR. LEVIN: -- so, I don't agree --
MR. WELCH: I respectfully disagree with that.
MR. LEVIN: That stuff is not relevant and I'm going to ask that it be produced.
MR. WELCH: Well, I'm afraid that one is going to ask for a court order.
MR. LEVIN: And whether some things are not admissible or not are a separate question, but we're entitled to conduct discovery.
BY MR. LEVIN:
Q So sir, let me ask you this: Were there Workers' Comp claims filed against Vanderbilt claiming that Vanderbilt workers were suffering from asbestos related disease?
MR. WELCH: No, don't answer that. I'm going to instruct him not to answer on this. If you're going to get into that, you'll have to have a court order.
MR. LEVIN: Okay. We'll certify that question.
A I will tell you that, in the mortality studies, which you either have or will get, there are two mesotheliomas reported in the mortality data, and the mortality data goes up through 1990, and neither of

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those mesotheliomas are considered linked to exposure to the talc by the authors of the study for different reasons. In one case, the latency was too short, and the other case the individual worked for about a week in 1948 and tore boilers out for the rest of his life.

Q Are those the only two mesotheliomas that you're aware of from talc workers working in these New York State mines?

MR. WELCH: Again, we're not going to let him discuss that.

MR. LEVIN: Why is that, other than it's not helpful to your case. Is there a legal reason?

MR. WELCH: I believe that it has to do with the time frame that the claims were sought in, and I believe that it has to do with whether or not whatever happened would have put Vanderbilt on notice of any condition.

MR. LEVIN: I'm not talking about only notice. People go off on notice.

BY MR. LEVIN:

Q Sir, do you have the expert designation? You've been designated as an expert in this case, are you aware of that?

MR. WELCH: He's being presented here

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today as the PMK regarding the issues sought.

MR. LEVIN: Are you withdrawing him as an expert, or are we going to have a separate deposition as an expert?

MR. WELCH: I guess we can do that.

MR. LEVIN: A separate deposition? Well, that will save some time. Are we going -- he's one of your experts, and he's been listed as expert member agent, and a bunch of things he's asked, he's going to be asked to give opinions on, and everything that he's read and reviewed is pertinent to those opinions, so I want to know if he's being withdrawn as an expert, or are you going to offer him at another time in that capacity?

MR. WELCH: No, I'm not withdrawing him as an expert.

MR. LEVIN: Are you going to offer him at another time in that capacity or am I going to be ask him questions in that capacity today?

MR. WELCH: You may ask him questions in that capacity today; however, he is not being presented as an expert dealing with Workers' Comp claims.

MR. LEVIN: That's not the focus of my

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questions.

BY MR. LEVIN:

Q All right. One of the things that you're designated on as an expert is that you're going to testify that there's no none association or connection between Vanderbilt Talc and any asbestos-related disease. Okay, sir, that's one of the subjects.

A Yes.

Q Okay. And can you tell me all of the cases of mesothelioma that you know that are alleged to have occurred in Vanderbilt miners or millers?

MR. WELCH: Are you going to limit that to the '60 to '85 range?

MR. LEVIN: No, I'm not limiting it to that, because it runs to whether or not this talc can cause mesothelioma, number one, which is independent of time frame. He's told us the mineralogic characteristics are the same. And number two, it runs to the foundation and my ability to cross-examine about his opinions that there's known association between Vanderbilt talc and asbestos-related disease. And I think I'm entitled to know how many mesotheliomas have been claimed to occur in Vanderbilt miners or millers.

MR. WELCH: He is not here prepared to

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testify about that information today. I have told you I am instructing him not to answer further questions on that ground.

MR. LEVIN: All right. Well, we'll see the judge on that.

BY MR. LEVIN:

Q Is that information contained within your health and mineralogic documents?

MR. WELCH: Is what information?

MR. LEVIN: Information with respect to claims by people that worked for Vanderbilt that they contracted mesothelioma as miners or millers working with their talc. Is that information in the body of health and mineralogic documents that you have?

MR. WELCH: I'm going to instruct him not to answer that question.

BY MR. LEVIN:

Q Sir, are you going to give me an answer to that or not?

MR. WELCH: On advice --

MR. LEVIN: You can't instruct an expert, under California rules not to answer. You cannot instruct an expert not to answer. You can object to their questions, but you can't

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instruct them not to answer, so can I have an answer, sir?
THE WITNESS: No, I think I'll listen to my counsel.
MR. LEVIN: You're refusing to answer?
THE WITNESS: Well, you know --
MR. WELCH: He was not prepared to testify on this area of questioning today.
MR. LEVIN: You are being offered as an independent expert, and for that you have no counsel and you have no right to refuse to answer, and I just want to know if you're refusing to answer. That's a yes or no question.
THE WITNESS: Well, yes, I know.
MR. LEVIN: I'm going to move accordingly in front of the court to strike you as an expert.
BY MR. LEVIN:
Q Do you know what the background rate of mesothelioma is?
MR. WELCH: Where?
A Where? Well, in general.
Q In North America.
A In North America? Well, there is a range depending upon who you talk to. I think it's something

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like -- I don't know for sure. I think it's one in several thousand.
Q One per million?
A Well no, more like one in -- per ten thousand or something like that.
Q Well, I think we're diverging on the difference between annual risk or lifetime risk.
A That's probably true. It's probably best left to, you know, the people who publish on it.
Q Okay. Do you know how many people live in St. Lawrence County?
A No, I don't.
Q Okay.
MR. WELCH: Again, he is not being offered as an expert in that area.
MR. LEVIN: I'm just wondering if he knows how many people live in St. Lawrence County.
MR. WELCH: Can we take a little break? I need a cup of coffee.
MR. LEVIN: Sure.
(THE DEPOSITION OFF THE RECORD.)
MR. LEVIN: I want to go back on the record.
BY MR. LEVIN:
Q All right. Let's go back to the notice here.

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In subject sixteen and seventeen on the last page, seven, it asks the following: How many -- and this is the -- one of the subjects that you said you were -- I can't remember whether you said you were the person most knowledgeable on this. But they have to do with how many Workers' Compensation claims you received relating to asbestos-related disease and when you first received a Workers' Compensation claim relating to an asbestos disease. Do you remember those topics?
A Yeah. They're listed.
MR. WELCH: And as I said at the beginning of the deposition, we're relying on the earlier objections filed, and that is one of the ones that we are relying on.
Q Okay. I just want to know if subject to that objection, whether you're the right person for these questions, if counsel -- if you were to decide to answer them or someone were to order you to answer them?
MR. WELCH: During what time period?
Q During all the time periods.
MR. WELCH: I'll let him respond to that.
A I believe I would be.
Q Okay. Now, turning to this mortality study

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by Honda.
A Yes.
Q Is this study all deaths among all employees of Vanderbilt working at the talc mining and milling facilities between '48 and '89?
A That's right.
Q Between '48 and '89. And was this study done in 2001?
A It was published in 2002.
Q Okay. When was it done?
A I think it was completed in 1994 or '95 and -- but the -- some of the preliminary reports were available, I think, as early as 1990, '91.
Q And do you know how -- do you know who it was that asked the authors of this study to do this study?
A Of course. Vanderbilt commissioned the study to be done.
Q Okay. And Vanderbilt paid for it?
A Of course.
Q Well, why do you say "of course"?
A Well, because the inference is that if a company pays for a study, it's biased and inappropriate, which makes me sick.
Q Okay. I'm all confused.
A Well, there's a scientific standard that says

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a study is good or poor no matter who pays for it.
Q Okay. And this was paid for by Vanderbilt?
A Yes.
Q And in your view, a study that's paid for by Vanderbilt is biased?
A I didn't say that. I said just the opposite. There's a scientific standard that decides whether a study is good or poor, not who pays for it.
Q Oh, no, but didn't you say -- what makes you sick?
A The fact that when people ask questions about who paid for something, the inference is that typically that if a company pays for a study, the study is biased or inappropriate.
Q No, that's only -- that's one possible inference.
A Sure, it is. Everybody's biased unfortunately.
Q Well, let me ask you something: When was the -- the first worker who was employed by Vanderbilt that was included in this study, the start date is 1948, right?
A Yes, the study included everyone that ever worked at Vanderbilt Talc from 1948 through 1989 for any period of time.

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Q Okay. And is there a description of the distribution of people as between those years?
A Yes, there is. In fact, the tenure or length of time was a factor in our questioning some preliminary results by NIOSH as to whether or not the cancer, lung cancer rate that was noted among those miners and millers was associated with exposure to the talc, whatever it is.
Q Well, my question is, can you tell from looking at that study, how many people began in '48 and how many people began in '60 and so on?
A I'm not sure. I would have to look at it. You certainly can tell from the study the duration of employment. You can tell that.
Q And where would I find that?
A (Indicating.) Well, I -- on -- on this published report, the closest to that, I believe would be reflected on table four, I think on page 579 up at the top. You'll see a column for years since hired then years worked.
Q On page four, I don't see any table.
A I'm sorry, on page -- the page would be 579 in the study itself.
Q I only have like -- okay. Is there unpublished material relating to this study?

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A Yeah. As I mentioned, there's a preliminary report. And actually, the preliminary report has a better breakdown, and I could give you that.
Q Are those in your files?
A Sure. Same stuff.
Q I'd like to have that produced also.
A Actually, there's a -- I think there's a table in preliminary data that breaks each case down.
Q Are you aware from your work in this area what the -- the -- about the long latency for the development of the disease mesothelioma?
A Certainly.
Q Okay. And in view of that latency period, why did the people who did this study decide to cut it off at 1989, which was only forty years when the -- according to Doll and Peto, the risk goes up logarithmically, so you have to find more and more mesotheliomas between the fortieth and fiftieth years out?
A Well, we contracted to have the study done, I believe it was in the mid '80s; '85, '86, maybe '87, something around that time, so the duration of the study was predicated on when we asked for it. There had been, I think, four or five prior mortality studies of this same cohort, and we were just bringing it up to

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date, you know, as of the time that we did this, because we had some questions about the lung cancer rates.
Q Did you have the -- do you have the prior mortality studies, too?
A Yeah, and they're provided to you. The ones I mentioned to you earlier.
Q Okay.
A And this is just the most up to date.
Q Okay. Have you gone back and tried to determine how many Vanderbilt employees have contracted mesothelioma between 1989 and 2001 -- or 2006?
A Well, that would require another mortality study.
Q Well, it wouldn't, because if they filed claims against you, you would know about them.
A Well, what happens is, I think they call them nosologists, that have to review like death certificates. It's not just like the comp claims. People can claim anything on the comp claim. It has to be verified.
Q That runs to whether or not the -- how much weight you would want to give to the information that you learned or ascertained as to mesothelioma deaths alleged to have occurred between '89 and 2006. What

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I'm asking is, as a -- do you still work for Vanderbilt?
A Yes.
Q Okay. As a person entrusted with health and safety issues at Vanderbilt, have you endeavored to go back and ask the question as to how many people who were Vanderbilt employees contracted mesothelioma between 1989 and 2006, a seventeen-year period after the study was concluded?
A I wouldn't do that. I would have to retain an epidemiologist to do that.
Q Well, does every --
A But I can tell you that, you know, the main thrust of these mortality studies was to look at the lung cancer to the extent that they reported mesothelioma. In deaths that occurred up to 1989, that's what they reported, and as I mentioned to you earlier, there were two that were reported, and both were dismissed by the authors as not likely linked to exposure to the talc for -- and they gave their reasons.
Q What were their reasons?
A Well, in the one case, which was originally, I think it was a death that occurred in 1975 or '76, which covered the study span of the NIOSH effort, the

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first mortality study. The latency was too short for it to be associated with the talc, and in the view of NIOSH, and the second one, I think, was a death, it was, I believe, in 1960 -- 1987 or '86, and it involved an individual that had worked as a surveyor above ground in 1948 for a few weeks, and then he opened a business where he removed boilers, furnaces for thirty or forty years. So the authors did not attribute that mesothelioma to exposure to talc. And those are the only two reflected. The other issue in terms of --
Q Wait, wait. Go on.
A The other issue in terms of plural, in terms of my responsibility as a health professional, is we did test this talc in one animal study that we contracted with, and then we found that there was another animal study that was done, unbeknownst to us, by Merle Stanton at the National Cancer Institute that used our talc.
Both of these studies involved one, an injection, and one a plural implantation of our product as it is off the shelf into the pleura of rodents. In the case of Smith, I think they were injections, and in the case of Stanton it was implantation in a gel.
In the case of the Smith study, he tested the product as a whole, and he also broke it down into the

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component parts; mainly, the amphibole component parts or tremolite, pure from our materials, and he tested it against tremolite asbestos, and of course Stanton had a lot of asbestos samples in his '72 experiments.
So, you know, he had essentially the talc put right on the pleura in two different animal studies, which is generally considered the most sensitive study you can do. And we didn't see any tumors, not any, not one, not even background in either study, and all the components of the talc were certainly present in both of these product samples. And the cell study was an effort to look at the talc fiber itself, and because we wondered, well, what if it was more of it? What if it was concentrated, would that produce an affect in mesothelioma cells similar to what would be seen with asbestos fibers?
It certainly was a sample that is not representative of any product or sample that anybody is exposed to. But nevertheless, we did that to test that hypothesis, and these samples, the asbestos samples acted differently in these -- in these mesothelial tracheal -- mesothelial cells than did the talc fiber, you know, in equal amounts.
Q You said differently?
A Differently, yeah. There were no -- like the

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proliferative affects were not there with the talc fibers in the asbestos.
Q All right. I want to come back to this. First of all, who commissioned the animal study other than -- not the Stanton one, the other one?
A The Smith study. That was -- Vanderbilt did that.
Q And how about the cell study?
A The cell study. We commissioned that as well.
Q All right. Let me -- I want to ask you about this conclusion that this mesothelioma contracted in 1975 or 1976 was -- should be dismissed because it was too short for the latency period for mesothelioma, and ask you when that person first started working at the talc mine and facilities?
A I -- offhand, I don't know the date, but I think the latency was fourteen or fifteen years.
Q He had been working for fourteen or fifteen years?
A That -- I think that was the latency, yes.
Q For him? Well --
A Yeah, for -- when he first started working for Vanderbilt and his -- and his death, I believe that was the latency.

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Q Okay. So you believe that he started working somewhere around -- in the early '60s?
A Yeah, subtract fifteen from whenever it was. I'd have to look at it and find the date. I believe because it was reported by NIOSH and their vital status cutoff I think was 1978, so it obviously would have had to predate that, so I think it was '76 or something like that, so --
Q Okay. And for -- on what basis did people conclude that fifteen years was too short of a latency period to develop mesothelioma?
A Well, that's what the -- that's what the researchers, both NIOSH and the University of Alabama concluded. I realize that -- that, you know, people have different spans and low ends and high ends. I know that the average span is typically thirty, forty, sometimes fifty years.
Q And you would agree with me that -- how many workers are we talking about that worked at Vanderbilt at any given time?
A We generally had --
MR. WELCH: In what area?
Q In the mines and mills.
A The total company.
MR. WELCH: Now, wait a minute. I want

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to make sure we're on the same page here. When you say the mines and mills, you're talking about up at Gouverneur Talc Company, not in Norwalk and not in other locations?
MR. LEVIN: Well, any location where they're exposed to talc is really what I'm trying to get at. I don't want to include people that wouldn't have any talc exposure.
A Well, the work population varied. I can give you -- I can give you basics. I know after 1974 through about 1984, say ten years, I think probably we're talking about maybe a hundred and twenty or a hundred and thirty. From about 1985 through around 1995 or 1998, the highest we would go is usually about a hundred and seventy some. And since 1997 or '98, I think we now have close to -- I think it's just a hundred. Prior to 1974, I'm not certain, but it would have to have been probably seventy maybe eighty -- seventy to ninety, you know, if that. That's a rough -- a rough range.
Q Okay. So the number of people working in the mines and mills that would have been exposed to talc in the pre-1974 years, would be in the sort of seventy to ninety range; from '74 to '84, it would be like a hundred and twenty to a hundred and thirty people. And

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from '85 to '95, the highest it would get would be a hundred and seventy, and thereafter, about a hundred would be a ballpark number?
A Yeah, in those ranges. I mean, we're not talking about lower than fifty or more than a thousand or anything.
Q So you're talking about the -- the entire time that we're talking about, from 1948 forward to the present date, there'd be sort of, on the low end, maybe, you know, seventy people working in the mines and mills that are exposed to talc, and the high end maybe a hundred and seventy, something of that order of magnitude?
A Yeah, actually, and since you have the Honda paper --
Q Yes.
A -- I think that the, you know, the study population and they lost very few to follow up. It was very few people they lost, and I think the cohort was eight hundred and eighteen, so, that, you know, eight hundred and eighteen people that worked for Vanderbilt Talc from 1948 through 1989 for any period of time.
Q Right. And clearly from the numbers you just gave me, some of those people must have worked there for a short period of time and then left?

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A Yeah. And that was one of the reasons why we kept doing the update study because we did see excess lung cancer, you know, as the studies say, and that excess lung cancer, about two and a half times what you would expect to see, persisted in every single study. And, of course, that is a concern, but the issue was that excess lung cancer associated with exposure to the talc, or was it associated with some other etiology.
For example, smoking is a usual one, you know, that you have to look at closely. And one of the reasons why we asked that question was that we found that the excess lung cancer that was -- kept being reflected in each of these mortality studies, was always among the people who worked for the least amount of time. In fact, over fifty percent of the lung cancer cases are people who worked for less than a year. Some, you know, one day, four days, seven days, eighteen days, versus people who were there up to, you know, for years, up to twenty-some years. They were not the ones who were showing the excess lung cancer, and that runs contrary to what you would expect.
And so that's why we kept -- that's why we kept doing the update studies to see what was going on. That's why we did the case control to figure out whether smoking was playing a role or not. We had to

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do that to figure that out.
Q Okay. And what did you conclude?
A Well, it turned out that the more plausible explanation for the excess lung cancer was, in fact, smoking. It turned out that we do, unfortunately, have twice the rate of smoking, you know, in that work population than in the white male population in the U.S. And we also -- the Honda study is important because we -- we -- and correctly so. We used to be criticized that, well, you know, tenure, you know, the time duration that you're on the job was used as a surrogate for exposure. But, you know, that's not the best exposure indicator. The actual dust levels are the best level indicators. And, you know, if you don't have dust exposure data that -- to cover all the years on the job, tenure is your next best bet.
And so, when we pointed out that we had this problem, where, why were we seeing the excess among the people who seemed the least exposed in terms of time, some researchers would say, well, maybe that's because the people that were there for the shortest time seemed to have a big exposure; they just had more of an exposure. Their lungs couldn't clear the dust as rapidly because the exposure concentration was greater, and so maybe that's the explanation because it does run

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contrary to what you see in asbestos-exposed populations. So that's -- that's why we did the update study. One of the reasons we did the final update study was to try to get an actual exposure in terms of dust to see whether there was a correlation between those who were exposed to the most dust and lung cancer or not.
And that's why the Honda study is important, because as it turned out, the excess lung cancer or the people with lung cancer was actually thirty-three -- thirty-one, thirty-two percent less exposed to dust than the people who were not. And once again, that's totally opposite in what you see in asbestos exposed populations.
Q The lung cancer?
A Yeah, for lung cancer. And also we noticed that for non-malignant respiratory disease, or, you know, pneumoconiosis, which can happen with exposure to any mineral dust, including our talc or anybody's talc or any mineral dust, it was opposite, in that the people who were there the longest and were exposed the most, tended to -- we saw a higher prevalence of pneumoconiosis or talcosis.
Q You would agree with me that --
A It should be the same. You know, it should

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be --
Q You would agree -- excuse me?
A I'm saying you should see -- they should go in tandem.
Q Okay.
A You shouldn't see a difference there.
Q Did any of these studies, the Honda being the most recent, look specifically for the disease mesothelioma?
A Well, it was a mortality study, so they listed every cause of death, including mesothelioma.
Q So they had to rely -- they relied essentially on the death certificate, whatever they said?
A Yeah, and I'm not an epidemiologist, but my understanding is that, you know, the thing is -- what happens is you obviously have to get all the records from the company for everybody that ever worked there, and then you have to figure out, you know, where they are, because a large group of them have, you know, have moved away or retired, and so forth. And then you have to figure out their vital status, alive or dead, and where did they die, and then you have to send off and get their death certificates from all these different jurisdictions.

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This is why it's not something you do, you know, a company does that. That's why you hire people to do this because it's a huge project.
Q You don't know whether anybody specifically in this study looked at the pathology to determine whether thirty-one punitive lung cancer deaths were actual lung cancers?
A No, they would have to rely on the death certificates, and they were -- I think they were reviewed by someone known as a nosologist, who sort of looks at the death certificate to see whether there's any reference to whether it's a primary or underlying cause, you know, that type of information.
Q Okay. And you haven't gone to the local hospitals and coroners and that sort of facilities that maintain records of death in the counties, from St. Lawrence County, to determine how many mesothelioma deaths there were in Vanderbilt workers after 1989?
A No.
Q Okay.
A We do medical surveillance, but that's for morbidity.
Q Was there any other reason for rejecting this mesothelioma that occurred in '74, '75, other than the latency issue? Was he believed to have worked

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somewhere else where he was exposed to asbestos like you talked about with the second person?
A Not to my knowledge, I don't know whether he did or didn't.
Q Okay. Is that underlying -- is the underlying -- we talked about it. Would that be in the underlying data that you have in your files?
A No, that would not be in that detail. I just have a little more detail on the actual thirty -- I think it was thirty-one cases in the last -- of lung cancer. I just had a little more detail in the individual cases in my file than is reflected in the report that you have, but nothing beyond that.
Q Do you know how the company got involved with Dr. Honda in Japan to do this study?
A Well, actually, we contracted with the head of the epidemiology department there, I believe was Elizabeth Delzell, D-E-L-Z-E-L-L.
Q Uh-huh.
A And all the preliminary reports were done by Elizabeth Delzell and Yasushi Honda was, I believe, a grad student. And I don't know why he ended up being the primary author, but really the study -- the bulk of the work was done by Elizabeth.
Q You would agree with me, based on your prior

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testimony, that Vanderbilt Talc workers do get interstitial fibrosis?
MR. WELCH: Would you repeat that?
I didn't hear the first part of your question.
Q You would agree with me, that based upon your prior testimony that you gave recently, that Vanderbilt Talc workers do get interstitial fibrosis?
A Well, yeah. Any talc worker is overexposed, whether it's our talc, Vermont talc, Texas or anywhere else. If they're overexposed, it is possible to get talcosis, which is a pneumoconiosis. It looks radiographically similar to what you see with asbestosis or kaolinosis or any of the minerals, and in our workers, we look at them every two years, actually for that. And I can tell you, and I can provide this as well, as we're sitting here today, about sixty percent of our guys have worked for twenty years or more, and we only have one individual in that entire work group that shows any even modest signs of any interstitial fibrosis at all, and that individual came to us from -- in 1974, another talc operation.
Q And when did you -- and do you attribute that to improved industrial hygiene at the mines and mills?
A Well, the Vanderbilt mine, and there's some studies by the New York Health Department in which they

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reflect dust data. In those days, back in the '50s, '40s and '60s, they reported it in particle counts, you know, million particles per cubic foot. And there are these published data out by the New York State Health Department that compares some of these dust levels at the various mines in that region at the time --
Q Uh-huh.
A -- and they're something on the order of ten to a hundred times greater than whatever was reported at Vanderbilt. I mean, as a hygienist, I always feel that the dust could always be lower and lower, but compared to the other talc operations in that region that are all gone now, it is significantly less.
Q When did Vanderbilt first begin to take industrial hygiene measures in its mines and mills to keep the dust levels down?
A Well, to begin with, the mine and the mill, the mill in particular, was designed in 1948. I mean, now it's not modern, but it was considered modern dust control technology, in that the mill was kept sort of under a positive pressure, or rather a negative -- you know, positive pressure.
Q Yeah, I know what you mean.
A So that, you know, when the ore was moved in the various ducts and so forth, the air would go into

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the ducts rather than come out. And that -- that -- that was a major improvement in the mine. The company always used what's known as wet drilling, where you spray water, you know, as you drill --
Q Uh-huh.
A -- and that was always done at Vanderbilt, whereas in the other regional mines, that was never done.
Q Okay.
A And these two things -- these two -- I mean, there's many others, but, I mean, these two technologies, wet drilling, positive, you know, pressure mill, closure of the ore movement and so forth, basically made the Vanderbilt mine and mill significantly less dusty, you know, than the other ones.
Q Okay. But --
A And then we continue to take air samples to be sure that the dust levels are kept, you know, at a reasonable level and try to make them as low as we can get them.
Q Okay. So let me just -- there's always been positive pressure at the mine and mill?
A At the mill. In the mine, it's use of water.
Q Okay.

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A You know, sort of --
Q Water --
A -- water like when you drill, which is one of the dustier activities.
Q Right. Wet drilling. Okay.
A Yeah. And that suppresses the dust levels.
Q And that's always been the case, to keep the dust levels down?
A Yeah.
Q And how long have they been taking air samples there?
A Well, the different groups took them over a period of years. As I mentioned, the New York State Health Department has some data that -- that would be from Vanderbilt, you know, that dates back, I think, the early '50s, you know, '51 or '52. And then there's some data from the Mine Safety and Health Administration. I think that may date back, certainly into the '70s, and I've been taking air samples there myself, even before I started working for Vanderbilt in 1985, around 1982, in terms of total respirable dust, that sort of thing.
Q Okay. So --
A So there's quite a bit -- there's quite a bit of dust data, and I must say it's stayed pretty -- it's

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pretty -- over the years, it's gone down over time in the mill, and it's stayed pretty much the same in the mine, because you can do more engineering in the mill.
At one time, the mill's dust levels were about the same as the mine, in some cases higher. Then as time has gone on, they've been lower in the mill and a little higher in the mine.
Q Okay. But your view, certainly going back to the '50s, '60s, '70s and '80s, Vanderbilt has always been concerned with keeping the dust levels down and has had some industrial hygiene program in place to do that?
A Yeah. I mean, the standard that I usually apply is I like to keep the levels no higher than two milligrams per cubic meter of total respirable dust, and usually they -- the highest will remain around one for packing and activities like that.
Q Okay. And did Vanderbilt provide any masks to its employees in the mines and the mills?
A Oh, they always did, but I think religious use of them, as is typical in most of industry, and if I were to say people would use them religiously, I would say that probably started in the early '80s maybe.
But they were always made available, you

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know, earlier, and the reports that I've heard is that more people at Vanderbilt tended to us respiratory protection than did employees at other, you know, area talc mines.
Q Okay. So masks were always provided to the Vanderbilt employees in the mine and the mill, and although they weren't used universally, it's your view that more people used them there than at comparable facilities?
A Yeah, yes, and -- and I would say, you know, as part of the -- as part of the original 1980 NIOSH study, you know, they did mortality but they also did morbidity --
Q Uh-huh.
A -- and because they were doing a study, like in the late '70s, they included a lot of workers that we brought in, you know, from like International Talc, which was another operation that we purchased, because you tend to bring in miners who are experienced --
Q Uh-huh.
A -- but also you bring in miners that have had exposure to a lot more dust, unfortunately. So nowadays we sort of reached the point where we're just dealing with workers who only had exposure to Vanderbilt Talc. And what we're seeing in our medical

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surveillance is excellent. But we did see people who showed, you know, signs of pneumoconiosis in the '70s and '80s, and almost invariably these were people who had exposures to these very high dust levels elsewhere.
Q Other than positive pressure, the wet drilling, providing masks to your employees, what other things did Vanderbilt do to keep the dust down during the time periods we've been talking about, '50s, '60s, '70s and '80s?
A Well, those are certainly the key ones, but there was always -- there's -- all of the typical controls include housekeeping, where you, you know, you try to remove the dust from rafters and from the floors, you know, so it's not regenerated when fork lifts roll over them or the vibration of the equipment regenerates the settled dust, so you try to vacuum, you know, that material so it does not become entrained again in the air. And more recent years, last ten years or so, we've provided like operator booths in the mills, where -- where the controls are in a secluded room where an operator can, you know, push the buttons and monitor the equipment without being actually out on the -- out on the mill floor. That's a big control.
One of the biggest dust areas that any mine is concerned about is the packing area, as you can

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imagine. And so, you know, there are local exhaust systems at those packing stations to, you know, to try to control the dust at the source. Those are the typical, you know, dust controls, controls that you see.

Q Okay. And how far back was Vanderbilt aware that there were health hazards associated with exposure to excessive amounts of dust at its talc mines and mills?

A Well, I can't speak for, you know, Vanderbilt as if it were, you know, one entity. I can tell you that my -- you know, I can assume that -- when I came to Vanderbilt or when I did work for them, when I worked for an insurance company, I did contract work for the company taking air samples and industrial hygiene. They certainly seemed to be aware that you wanted to keep dust levels low and that overexposure to talc dust or any mineral dust could be, you know, hazardous to a person's health.

(THE DEPOSITION OFF THE RECORD.)

MR. LEVIN: Okay. I'll be back in a second then.

BY MR. LEVIN:

Q When did you work for them for an insurance company?

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A It was in the early '80s, I would say, from, say, 1981 or '82 until 1985 when I worked for them permanently.

Q What kind of insurance company?

A Well, I worked for Hartford Insurance Company.

Q That one of its insurers?

A At the time it was, yes.

Q And so what -- in what capacity were the insurers involved through you with health issues?

A Well, the Hartford covered Vanderbilt for Workmen's Comp, among other coverages, I think auto liability and third-party product liability and so forth. And I worked out of the New York office as a hygienist and risk reviewer. And I was asked by the individual that was, what they call servicing the Vanderbilt account, if I would go to the various Vanderbilt locations, not only the talc mine but others, and do industrial hygiene monitoring and provide reports to the company and make recommendations as to how to improve dust and chemical exposures and so forth.

Q Was that because Hartford was concerned about receiving claims or because they had already received claims?

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A No, it was just a service that the insurance company provided. I would do that for many companies.

Q Okay. And going back to this time when you were working with Vanderbilt on behalf of Hartford, it was clear to you that they were concerned about keeping the dust levels down?

A Yes, yes, it was -- I was pretty impressed by the efforts they made.

Q Okay. And in your capacity as the custodian of the mineralogic and health documents, which you've reviewed on occasion and in your capacity now and over the years with the company, was it clear to you that the concern of Vanderbilt, in terms of keeping the dust levels down, predated your association with them when you worked at Hartford?

A I would say so, yes.

Q Okay. And without pushing you into an area that you're not not uncomfortable -- that you're uncomfortable with, how far back, is it clear to you, based on the documents you've seen and everything you've learned working through Vanderbilt, was it that Vanderbilt first exhibited this concern about keeping the dust levels down in the mines and the mills?

A Well, you know, it's -- I don't know if I would characterize it as first exhibited concern. I

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think it -- it would -- from looking at the dust data that the New York State Health Department had published, it looked -- you know, I could see the disparity in the overall dust levels of that operation, of the Vanderbilt operation in comparison to the other talc operations in that region, so I would -- I would -- I think it's reasonable to assume from that comparison that, you know, some thought went into building the mill and the wet -- using wet technology so they -- you know, it would seem that they were concerned about that and interested in keeping dust levels down from the get go.

Q Okay. And how far does New York -- was the New York State Department of Health air monitoring stuff earlier than mine safety? Which is the earliest?

A I believe it would be the New York State Health Department.

Q Okay. The New York State Health Department air sampling goes back to -- well, dust levels goes back to what date?

A Well, there are -- there's some tables that reflect data into the '40s.

Q Okay. So in -- and you have those tables?

A Yes.

Q And are those among the materials you've

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produced to me?
A No, they're not.
Q Could you produce those to counsel so he can review them?
A Send you the tables?
Q Well, the whole New York State dust air level monitoring and mine safety air monitoring, all that stuff, I'd like to see it.
A (Indicating.)
MR. WELCH: Again, I'm reserving the objection on that, depending on what it shows or whether or not it seems to be pertinent.
MR. LEVIN: I just want to get to first base so that he gives it to you so that if you have a problem with it you can tell me, and if not you'll produce it.
MR. WELCH: Okay.
MR. LEVIN: All right. Thank you.
BY MR. LEVIN:
Q So as early as the 1940's, Vanderbilt, in conjunction with the New York State Health Department, was measuring dust levels in its air, in its mines and mills in New York State?
A Well, the New York State Health Department published dust data; whether Vanderbilt asked them to

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take it or how that was done, I don't know.
Q Okay. You don't know who initiated the monitoring of the dust data at Vanderbilt mines that the New York State Department of Health did in the '40s?
A No, I don't know. I don't know whether that was a routine or a special project, I don't know how that worked.
Q Okay. And do you know who initiated the Bureau of Mine Safety air monitoring --
A Well, that would be the mine act, which tells the Mine Safety and Health Administration that they must, you know, visit each mining facility. If it's an above-ground mine, twice a year, if it's an underground mine, four times a year, and part of those visits include, on occasion, dust sampling.
Q And when did that begin?
A Well, off and on, probably -- I think I've seen MSHA data certainly back into the early '80s. There may be some in the late '70s. I don't think MSHA was in existence prior to '75. I'd have to check, but I think that's true.
Q Okay. And could you tell me upon what date Vanderbilt Talc first began to warn its customers about the risk, health risks associated with excessive

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exposure to talc dust?
A Well, based on what I've seen in the historical files, copies of which I think I saw in documents that you provided to me -- in fact, I'm looking for one now. Oh, it would be -- it would be on the -- I'm looking at the -- the -- the old MSDS's that you sent.
Q Uh-huh.
A Now '75 and so forth.
Q Yeah.
A And I look at the section, special precaution section --
Q Uh-huh.
A -- 5, avoid breathing dust, use respirators in TLV exceeded, and then they give the TLV's at the time that existed for these mineral components.
Q Uh-huh.
A And actually, for 1975, you know, that's -- that's not bad. I mean, obviously now it's a whole lot more exhaustive, but in those days, very few companies even produced material safety data sheets. In fact, I don't think they were even required to do that until the '80s.
So they warn people about breathing dust, and they tell them not to breath excessive dust, and

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excessive would be dust that exceeded the established threshold limit values, which at the time were reflected on the material safety data sheets, so as a hygienist, that's what I would use to determine whether or not the dust was risky or not.
Q Okay. So at least as early as the '75 material data safety sheet, you're pointing to this language in section 5, special precautions --
A That's all I have to look at sure.
Q -- right? Do you know if it was contained in any earlier material safety data sheets?
A I don't know when the earliest material safety data sheet was produced for talc. I thought it might be maybe 1972, which may be a couple years earlier. They all look the same or very similar.
Q Do you have those?
A I can check. I don't know that I can find one that is --
MR. WELCH: I thought we gave him the ones we could find.
A Oh, okay. I know we did a whole --
Q There's one that I can barely read that says oldest pre '74 --
A That's probably right.
Q -- but it's blank.

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MR. WELCH: We're not picking on you. I can't read it either.
Q But it doesn't seem to have a section 5.
A Yeah, it may not. I mean, I'd have to look but I -- as I said, it wasn't common for companies to even produce material safety data sheets in the '70s. I think the -- the OSHA Hazcom standard, I think, took effect in the early -- in the mid '80s or something. I think that required all companies to produce them up to a certain standard, as stipulated in the Hazcom standard.
Q Okay. In the earliest -- what is the earliest date that there was a caution label, or warning label put on the actual bags of talc sold, health warning?
A Health warning in the sense of what? Do not breath excessive dust or something like that?
Q Yeah.
A I don't know. I -- I think I've seen, in the '70s for sure. Earlier, I'm not certain. I'd have to check. I would to have look.
Q Okay. Well, let me direct your attention to a document that you've produced to me --
A Uh-huh.
Q -- interoffice memorandum, date, January 19,

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1978 to Mr. Streitmatter from Mr. Erdman. Copies to Vanderbilt, Noland, Harvey, Thompson and Niehaus.
A What number is that? I'm sorry.
Q What -- say that again?
A Do you have the number?
MR. WELCH: This is the ones we sent him.
A Oh, the ones you sent him.
MR. WELCH: I showed you that.
A That's the health stuff.
MR. WELCH: I think that's what he's talking about.
Q I'll read it to you while you're looking for it.
A Yeah, I think I can find it.
Q Okay.
A Okay. Yeah. It's dated January 18th, '78?
Q 19th.
A 19th or 18th? This says 18th. Am I wrong?
MR. WELCH: This one says 18th.
Q Really? Well --
MR. WELCH: Well, there's two.
Q There's one, if you turn the page.
MR. WELCH: Yeah, there's one on the 18th, one on the 19th.

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Q Yeah. And in the 18th -- let's go to the 18th then. It says Hal Harvey is forwarding you copies of this letter dated January 18th, 1978. On the subject of talc labeling, when you start this program, you will be hand testing the bags, and it's probably not possible to apply the caution label to every bag.
And there there's a bunch more language, but would this, in your mind, mean that the first labels warning customers, labels on the packaging, talc packaging warning customers about health hazards began in 1978?
MR. WELCH: If you know.
A If I know? I don't know for sure. It would suggest it.
Q Okay. So you would agree with me that based on at least this letter, the suggestion is that Vanderbilt first began putting a health warning on its talc packaging sometime around January 18th, 1978?
A That's what the memo suggests. Whether it's true or not, I don't know.
Q Okay. And then -- all right. Have you looked through -- one of the things I asked about was warnings on packages. Have you looked through your documents to determine whether there are any other documents on the subject of -- warnings on packages and

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health warnings to customers in the Vanderbilt records, other than the ones that have been produced to me?
A I believe that these -- this is actually -- I believe that this is probably the earliest references that I could find. It's not to say that there might be others in the archives someplace that I didn't see or didn't find, but I think these are -- if you ask me, these are the earliest ones I could find.
Q Okay. My question is, are these the only ones, because sometimes when there's --
A Right.
Q Yeah. Sometimes a company does subsequent discussion and modifications of the warning and packaging as time goes on. Is there a file somewhere or set of documents that relate to the package warning that you're aware of?
A Yeah. I would have to say that I really -- I don't feel comfortable answering this. I mean, it's way before my time, and obviously my focus is what happens once I'm here and how good things are and not what happened, you know, years and years earlier.
Q Well, in your capacity as the person most knowledgeable for Vanderbilt produced on the issues of packaging and warnings between --
A Right.


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Q -- '60 and 1985, have to spoken to anyone to inform yourself as to things that you may not have been aware of that may have proceeded you?
A Well, I have a file that I believe was a historical record of labels and MSDS's, and the documents that you have, the MSDS's that you have, these two letters came from that file.
Q Okay. Well, could you produce that file to counsel so I can see the rest of it?
A I can look at it. I'm not sure that you don't pretty much have it, but --
Q Well, that's what I'd like you to do. My earlier question was whether you've spoken to anybody at the company about the warnings and packaging, vis-a-vis health, in order to better inform yourself in your capacity as the person most knowledgeable in preparation for this deposition?
A I've spoken to, you know, Vanderbilt employees about historical labeling. I wouldn't say I did it in preparation for this deposition. Just out of curiosity and understanding, I have done that. I particularly, you know, as it pertains to these -- these issues on, you know, the mineralogy in the confusion and so forth, I kind of wanted to know the history of that a little bit.

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Q Okay. Okay. Have you gone back through the records, particularly that file, to see if these are, in fact, the only documents pertaining to the history of packaging and warning, vis-a-vis health hazards of Vanderbilt?
A I'll look again. I think they are, but I'll look again.
Q Well, when did you last look at them?
A Well, I probably -- within a year, I would say.
Q Did you -- but you didn't look at them specifically --
A For this case?
Q -- with respect to the requests that have been made in this notice and production of documents in this case?
A No.
Q In fact, the first time you did anything with respect to the notice and request for documents in this case was yesterday, correct?
A Yes.
Q All right. Turning to January 19th. I can't read the caution label, but I can read the text above it, and it says "We are the first one to admit that these labels are not real good, but it's the best we can do."
And that's from Mr. Streitmatter, from Erdman, CC Vanderbilt, Noland, Harvey, Thompson and Niehaus. You see that?
A Yeah.
Q Do you know what they meant, that it was the best they could do?
A No. It could mean any number of things. Sometimes I know that labeling issues that we have now, very often it's the size of the letters and how they're going to fit on the bag, you know, issues like that.
Q Okay.
A How they are going to get on the bag. Is it going -- do we have to stencil them on, can we have the bags preprinted, you know, there's issues of that sort, so I really don't know in what way they meant this.
Q Okay. You know what it means when they say the labels are not real good?
A That's what I mean, I don't really know what the meant by that.
Q Hopefully they're better than the copy I have.
A Hopefully they are, yeah. I think that these two -- I think they probably -- it looks like they say the same thing, don't you think?

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Q I'm assuming that, too.
A Yeah.
Q Now, who were these people that were copied on this --
A Okay.
Q -- office memorandum within the company?
A Well, it was two -- let's see, the one on 19 -- January 1978, Vern Steitmatter.
Q Uh-huh.
A You have -- if my memory serves me correctly, it's -- the Streitmatter was sort of the -- like the vice president in charge of production. He oversaw the production facility, the chemical plant and the mines --
Q Uh-huh.
A -- okay? And he was an engineer. George Erdman, who was writing, you know, to Mr. Steitmatter --
Q Uh-huh.
A -- George Erdman is a mining engineer, and he was the general manager for Gouverneur Talc.
Q Okay.
A Now, you want to know about the CC or XC or whatever it is there?
Q Yeah.

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A Well, obviously H.B. Vanderbilt is -- was the CEO of the company.
Q Uh-huh.
A T.T. Noland was the vice president, administrative, you know, chief executive officer.
Q Uh-huh.
A A.M. Harvey was in some ways my predecessor.
Q Uh-huh.
A C.S. Noland is actually a -- Dr. Thompson, he is a mineralogist --
Q Uh-huh.
A -- and was in charge of research and development, minerals. And J.P. Niehaus was the director of research and development.
Q Okay.
A Okay.
Q Is Mr. Harvey still alive?
A I believe so.
Q When you say he was sort of your predecessor, what do you mean?
A If -- well, he -- he -- I think he was called the director of environmental affairs, who oversaw the production, the original production and material safety data sheets and had a lot to do with product registration issues.

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A woman worked for him who was an attorney that did patents, and when issues arose over, you know, asbestos definitions and regulations and so forth, beginning with the, you know, first OSHA standard in 1972, he was given the assignment to basically, you know, monitor that, and whether or not it pertained to Vanderbilt, and if it did and how and so forth.
Q Do you know where he lives?
A He lives in Wilton, I believe, Wilton, Connecticut.
Q When was the last time you talked to him?
A I think I saw him about -- it had to be maybe seven or eight months ago.
Q Okay. Who else on this memo is still alive?
A Well, on the January 18th -- I'm sorry, you mean the January 19th?
Q Yes.
A Dr. Thompson is.
Q And where does he live?
A He lives in Norwalk, Connecticut here.
Q Okay.
A And I don't know -- I know, you know, Mr. Vanderbilt is deceased; Mr. Noland is deceased; Mr. Streitmatter is deceased; Mr. Erdman is still alive. He is retired. He lives in North Carolina.

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Q Okay.
A And did I say -- I don't know the status of Mr. Niehaus.
Q Are these the same Vanderbilts, the famous Vanderbilts in New York? You can visit their mansions and stuff like that?
A I wish it were. No, it's not.
Q All right.
A No, I don't think they're related.
Q Okay. On the animal study that Vanderbilt commissioned, did they inject the asbestiform fibrous talc into the animals?
A To the extent it's present in the product, yes.
Q But they didn't separately do that, look for it?
A No. There was separation. It was the product as is. The only thing they separated was the tremolite, you know, the amphibole cleavage fragment tremolite from our ore. The non-asbestiform variety, chrysotile variety, and they tested that against the tremolite variety from Korea, you know, the actual, the real thing.
Q Well, how many samples did they take, because based on the rareness of this fibrous talc only being

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in one percent of the talc, I'm curious as to whether that could have been missed?
A Well, I don't know. I think that sample was characterized -- I'm trying to think. I know the Stanton samples were characterized, looked at by Dr. Wylie. I'm not sure if the samples that were used by Smith were. There is another -- it was a --
Q Well, is there any way you could tell whether any of the material injected into the animals in either --
A Well, for certain in the Stanton.
Q Okay. And did it have fibrous talc or not?
A It definitely did, but he actually reported -- you know, as you said, his classic study was the idea that, you know, long, thin -- you know, the samples that contained the highest proportion of long, thin durable fibers would -- his theory was that they would be the most carcinogenic, and that's what he was testing, so each sample that he tested he carefully measured all the, you know, the particulate in terms of length and width to see whether that hypothesis held true, and in general it did. There were some exceptions.
And the Vanderbilt Talc samples was one of the exceptions, because he actually had a lot of

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numbered fibers that met his critical dimension, which is less than a half -- quarter micrometer in width and longer than, I think it was -- what was it, eighteen or twenty, something like that. And that sample, based on his hypothesis should have produced something like thirty, forty percent tumors, and it produced none. And that's the only material -- you know, talc fiber is the only thing that would have those dimensions, so obviously they were present in the sample.

Q And what did he find with respect to fibrous talc?

A Well, I just said they were present in the sample, so whatever they were, you know, that's what he got, and the sample was representative of the product.

Q But how do we know that the sample contains fibrous talc, that's what I'm trying to find out?

A Oh, because there is a -- a -- a -- I'll send you this, too. It's a study that -- that looked at the relationship between fiber width and tumor promotion across a number of studies, animal studies, of which Stanton was one of many. And in order to do that study, the authors wanted, one of which I was an author, had samples that were available from some of these studies analyzed and measured, and the samples that were used by Stanton were the samples that were

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analyzed and measured and characterized, and in that study there is a description of those -- of those samples, and it specifically relays, you know, talc fiber components.

Q All right. Now, are you familiar with the 2002 Hall, Abraham and Case article called Mesothelioma Among Workers in Asbestiform Fiber Bearing Talc Mines in New York State?

A Yes.

Q And those are mines in -- are these talc mines that they referred to in St. Lawrence County, the Vanderbilt Talc mines or are there other talc mines there?

A I believe his reference was to all talc mines in that region, so it would have included just that, all talc mines in that region, which would have included Vanderbilt and any number of others.

Q Okay. How many talc mines are there there?

A Well, that was interesting enough. That region was the area for the first talc mine in the United States, and I think it was somewhere in the area of maybe -- at least, I would say, ten, probably there may be more.

Q But how close to each other were they?

A It varied. I would say within a radius of

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maybe -- in some cases maybe fifteen, twenty miles.

Q And do they all share the same vein, so to speak?

A No, I don't believe so. I think there is some literature on the geology of the area, and they refer to different deposits with some different names. We mine in one deposit, some other talc operation operated in other areas.

Q Okay. And it says the hub of this industry was Gouverneur, home of several talc mines, one of which is still operational. Is Gouverneur where your talc mine is?

A Yeah. The -- Gouverneur is a town, and our talc mine and mill is roughly about five miles, you know, to the east.

Q And how many talc mines are there in Gouverneur?

A Well, there are none in Gouverneur. As of 1974, the only talc operation in that region has been Vanderbilt.

Q What's the closest -- other than Vanderbilt, to Gouverneur?

A Well, there are no more in operation.

Q How about historically?

A Probably have to -- I think there are

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references to that. I don't have them in front of me, but I think they could be gotten to you.

Q All right. Now, in the article -- do you know who Dr. Case is?

A Yes.

Q Okay. And you know Dr. Abraham?

A Yes.

Q And Dr. Hall?

A I think Dr. Hall was a grad -- graduate student working for --

Q Okay. And this is published in American Occupational Hygiene?

A As a supplement, yes.

Q Yes. And you said that why?

A Because it was not a peer reviewed -- full peer reviewed paper.

Q Okay. Is this the most recent paper on this subject of talc and disease?

A Well, it's a case study.

Q Well, whatever it is, is it the most recent one that you're aware of?

A I believe so.

Q Okay. Now, they say that -- that one of the two counties is among the ten highest counties in terms of mesothelioma mortality up until 1981. Do you see

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that?
A Yes. I believe it was the county to the south of St. Lawrence. I think was Jefferson County.
Q Jefferson County?
A That's right.
Q And -- and -- and -- and -- and what would your hypothesis be for why that is?
A I don't know. All the talc mines were located in St. Lawrence.
Q Okay. Does everybody who works in the St. Lawrence talc mines live in St. Lawrence?
A I don't know. My guess is there may be a few, but that would be a guess.
Q All right.
A Oh, no. It would be the other way around. Likely more would live in the county where the talc mines are than in the county where the talc mines are not.
Q Okay. But this is an article about talc miners and millers not just people, correct?
A Well, he -- he uses -- he uses the mortality, you know, the mesothelioma rates in New York State as a support. He uses it as an indicator, suggestive indicator, and I think he says it with some qualification that the elevated mesothelioma rate in --

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what is the county to the south, Jefferson?
Q Yes.
A He suggests that that could be due to an environmental exposure prompted by talc operations. And he doesn't say -- he can't say that for an absolute certainty, he just says it's suggestive.
Q All right. It says eight talc miners have been previously identified in other studies as having mesothelioma. You see that?
A Uh-huh, yes.
Q And now they find five new cases of mesothelioma among talc workers, you see that?
A Yes.
Q Now we're talking about fourteen cases of mesothelioma among talc workers, is that right?
A I don't think so. I think your arithmetic is probably off. He basically talks about --
Q Thirteen. Thirteen.
A He basically talks about what he refers to as five new cases --
Q Yeah.
A -- of which there's only histology slides available, I think, for three. The other -- the other two were there because they showed up either on a comp record or on a death certificate.

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Q Sounds like the -- do you have histology slides for your Honda study?
A Well, the Honda study is just a straight forward epidemiologic mortality study. They wouldn't be doing pathology, you know, to confirm or deny, you know, a diagnosis. They have to rely on the death certificates.
Q They didn't use histology slides?
A No, you would be -- it would be -- no, it's just a straight forward classic epidemiologic mortality study that relies upon death certificates that are confirmed and gone over by a nosologist.
Q Okay. So they didn't use histology slides in the Honda or in the Abraham study, correct?
A Or in the Abraham study?
Q Correct.
A No. He did have -- he did have slides or tissue samples for, I think it was three of the cases. I believe that --
Q Okay. So why are you quibbling with the absence of histology slides, I'm trying to get at?
A Well, you asked me about the Honda study. The Honda study is a mortality study that operates off of death certificates.
Q I understand that. But you were willing to

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accept the death certificates in the Honda study as showing --
A What?
Q -- no increase in mesothelioma?
A No, they reported to.
Q But you're requiring histology slides in the other paper, I'm trying to figure out why?
A Well, these are two very different types of studies.
Q I understand that, they're different in many ways, but the one way they're common is that neither one relied on histology.
A Well, you know, look --
Q Partially.
A First of all, to try to compare, you know, a -- a lung-burdened case study with an epidemiologic study is problematic to begin with. Secondly, you know, part of the -- one of the reasons it's problematic is because you really don't have, in the whole study, really a good work history on any of these -- any of these cases or controls. You don't have good descriptions of why the -- you know, the controls were picked. He had some forty some to look for, why did he pick thirteen? What prompted that?
What about why -- there's lots of issues,

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lots of issues about the comparison between what's found in the various lung tissues and whether or not the use of SEM selected electronmycroscopy is sufficiently sensitive to pick up what Hull refers to as commercial asbestos. Most mineralogists and analysts will tell you it is not sensitive enough for that.

Q You could -- sir --

A There's a lot of issues.

Q -- you could always find flaws in every paper, and I can find many in lots of papers, but wouldn't the responsible thing be to do when you have a finding --

A Yeah.

Q -- that says, you know, there's -- there's mesothelioma occurring in talc workers, and mesothelioma is a disease that occurs in one per million in the general population per year and only one per ten thousand lifetime risk.

Now, there could be a lot of explanations for this having to do with other employment and whatnot, but one of the possible explanations is that something about talc mining is causing mesothelioma and I've got to look at this further. Wouldn't that be the responsible way to approach this?

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A If you didn't have any animal data that suggests otherwise; if you didn't have epidemiologic work that suggests otherwise; if you didn't have morbidity studies and medical surveillance programs or you look at the lung disease guides every couple years and compare them against what is seen in true asbestos exposed populations for similarities, that would be the case, but that's not the case --

Q Well --

A -- a lot more is known about this.

Q -- in almost every case involving chrysotile products, including the counsel representing Vanderbilt, come up against the issue of animal studies, their response is animal studies are not reliable, because they show chrysotile causes mesothelioma in animals, and we can't rely on animal studies, so let's throw that out.

A Well, when you take tremolite asbestos, for example, and you put it right on the pleura of just about any animal, and you take the non-asbestiform variety of the tremolite and put it in the same place under the same test conditions, every single time you see totally different results. That's pretty consistent.

And you know from human studies that people

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who are actually exposed to asbestos do show these diseases, and other human studies of people who are exposed to, let's say, amphibole cleavage fragments as a group, like home stake mining, reserve mining, they do not show excess cancer associated with those types of exposures.

So, you know, when -- you have to look at the totality of the evidence. Not one study -- because you're right, every study has strengths and every study has weaknesses, but you can't hang your hat on a single study. You have to look at the totality of the evidence.

Q The problem is that no study can be large enough to capture much of an excess incidence of a disease that only occurs in one per million. You should be able to go centuries without getting a mesothelioma -- single mesothelioma in a talc worker, and if you got one, it would be one of those background cases, but you should never get two. And you have more than two. You have -- you have the comp claims, which you're refusing to produce; you have the two in Honda study, which you want to discount, and we have potentially all the people that have been diagnosed with it after 1989 that the Honda study doesn't cover.

A Well, I don't know what to say to that.

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MR. WELCH: Was that a question?

MR. LEVIN: Just an observation.

MR. WELCH: Well, he's not going to respond to an observation.

MR. LEVIN: I don't expect you to.

THE WITNESS: I'm sorry, I have a problem with the whole paper, and I've asked people to review it for me who have more knowledge in pathology and statistics and mineralogy than I do, and I've been advised that this is a terrible paper, terrible in the sense of poor science.

BY MR. LEVIN:

Q Well, are you disputing that the five people got mesothelioma?

A There's only -- I think that there are only -- I think that there are pathologists who would tell you that the -- that the staining techniques in some of the work that was done, not on all five, but on some of them was insufficient to make that diagnosis. On a couple others they might say it was. But I think that --

Q What would you say to me --

A -- that's an issue that has to be taken up by people who are more expert on pathology and statistics in comparison to myself.

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Q All right. Let me ask you this: You're also tendered as an expert. Let's just assume that the five people, in fact, got mesothelioma, and, in fact, were talc miners. And in fact, that was their only employment. Would you agree with me that that's too many mesotheliomas in talc workers to allow you to continue to conclude that talc exposure doesn't cause mesothelioma?
A If I had all those ifs and ands, it would concern me, but we do have all those ifs and ands and we do have other data that -- that, you know, that sometimes people don't have, and if I didn't have the other data, yes, I would be more concerned.
Q Would you also be concerned to learn that even in the Honda study, the person who got mesothelioma in 1976 was well within the accepted latency for contracting mesothelioma and had no other exposure to asbestos other than working in the talc mines?
A Well, I don't know if that's true or not, that he had no other exposure, and I'm not sure that fifteen years is really a reasonable lower end.
Q That's outside your area of expertise, right?
A It is, and what I've read, I've heard people argue all over the place on that.

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Q Okay. Well, if the latency period for contracting mesothelioma is longer than fifteen years, you would agree with me that that's one of the flaws in the Honda study, in that they stopped in 1989, and many of the workers did not have exposure commencing in 1948?
A Many did not, you know, but interestingly, as I mentioned to you earlier, we do do medical surveillance, and as we sit here, it's over sixty percent of that work population today has more than twenty years of exposure.
Q What is the nature of this surveillance?
A Well, you know, like most companies, we do chest X-rays of our workers every couple years. We have to do hearing tests every year, part of the law for noise exposure. We do pulmonary function testing. We have the X-rays immediately read at the hospital by a radiologist, and then I also have a pulmonary specialist from the University of North Carolina review them, you know, several weeks later, because he's a specialist in occupational pulmonary medicine.
Q Okay. And from the beginning of time up until the present date with your surveillance operation, how many Vanderbilt employees have contracted mesothelioma, that you know of?

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A That I know of?
Q Yes. That you have information concerning.
A I -- I would only really -- you know, I don't even feel comfortable talking about the two in the mortality studies. I don't even know if that diagnosis was correct.
MR. WELCH: And he is not offered as an expert in the diagnosis of mesothelioma.
Q Okay. If the -- if the -- if the standard is going to be that anyone who has mesothelioma -- and we don't really know if they really have it. I understand that. But what I'm trying to ask you is something different.
If from the beginning of time, how many Vanderbilt former employees or current employees are you aware of that have allegedly contracted mesothelioma? I'm not asking you to confirm their diagnosis, but where somebody believes they had mesothelioma?
MR. WELCH: Well --
A I don't know. I don't know who believes they do.
Q Well, is it more than twenty?
MR. WELCH: Oh, come on.
A Oh, come on. Oh, heavens no.

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Q More than fifty?
A Well, if it's not more than twenty it certainly cannot be more than fifty.
Q Okay. Is it more than fifteen?
A Oh, look, I just -- I'm not in a position to answer that.
MR. WELCH: This is outside the scope of what he's being offered for.
Q It's actually not, and it's very pertinent to all the answers he's given, so it's actually within the scope of the PMK and with his -- in the scope of the area he's being offered for as an expert and actually within the scope of his testimony.
Well, what's the minimum number you feel comfortable saying of Vanderbilt employees who are alleged to have had mesothelioma?
MR. WELCH: None.
A Well, I -- I don't know how many allege. I mean, I can -- I know about the two in the report. I don't know who in the whole paper worked for Vanderbilt or not. I don't know whether any of them did. Maybe some did --
Q But --
A -- some didn't. I don't know. There's no work history. I have no way to tell.

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Q Well, but you know who Vanderbilt employees are, and you know which ones have filed claims and which ones are in your house surveillance, and in which ones in your files are alleged to have gotten mesothelioma and which ones have sued you.
A We have seen no evidence in our medical surveillance of mesothelioma.
Q Okay. How about in claims made against the company?
MR. WELCH: Now, there we go again. We're not getting into Workers' Comp cases.
Q Okay. Well, then I think it's fair to assume that there's lots of people who work for Vanderbilt who have got mesothelioma.
MR. WELCH: That is not a question. I object to it.
MR. LEVIN: I think it's fair to assume that.
MR. WELCH: Do what you will, but it is not a proper question.
MR. LEVIN: Because I know that most companies, if they had exonerating evidence would produce it. And I think the witness knows the answer and you know the answer.
THE WITNESS: Well, I don't think you'd

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accept exonerating information. You don't accept the -- the -- those two cases. You're ready to jump on those as though those are associated and they're so shaky it's almost laughable.
MR. LEVIN: I didn't jump on the two cases. I jumped on one of the cases because I thought the reason you gave was ridiculous, okay?
THE WITNESS: Well, fifteen years --
MR. LEVIN: The second --
THE WITNESS: -- well, I disagree.
MR. LEVIN: The second one where you say that he worked for years around boilers, I thought was, you know -- I didn't critique that one, I critiqued the other one.
MR. WELCH: All right. Let's quit debating the testimony.
MR. LEVIN: All right. I've got to take a short break here.
MR. WELCH: Bill, let me ask you this: How much longer do you think you'll be?
MR. LEVIN: It could be many hours. You know, I don't really want to wear you or the witness out, and I think in fairness to everybody, it's clear to me that when you produced this other stuff, there's going to be another installment in

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this, so why don't you guys talk over what you want to do. I'm flexible.
MR. WELCH: All right. And you're going to take a little break now?
MR. LEVIN: I'm going to take like a five-minute break, because my law partner called a minute ago and told me to call immediately, all right?
MR. WELCH: Yes.
THE WITNESS: All right.
(RECESS TAKEN.)
MR. WELCH: We're going to try to get you the additional documentation. It's obvious from the questions you have done so far that there will be more to come. It's now approaching five o'clock on the east coast, and R.S. Vanderbilt has a policy of closing down for security reasons at 4:45, and we need to vacate, and the court reporter has plans for 5:00, so I suggest we just stop now. I'll get you the information. I won't promise you I'll give you all of it, but I'll get you a good portion of what you have asked for, and we can continue it at a later time.
MR. LEVIN: Okay. Let me just say it's fine for me to continue. It's clear that we might

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not finish today, even if we had the additional documents, and since we don't have the additional documents, we definitely won't finish today and we'll have to resume anyway.
And I have no need to wish to inconvenience everybody to go late today when we have to find another day to do this anyway. I am reserving my right to ask all the questions that I need to ask, both what I would have asked today and new questions arising from the documents. And more important than that, I mean, I do expect that the witness and counsel will take seriously their obligation to look for all the things that we've discussed today that is in the possession of Vanderbilt and defendant counsel, for him to look at it and presumably forward it to me without extracting anything, or at least identifying for me the issues he may have with particular documents in terms of production, and resume after I've had those documents in my possession to review, and we can then conclude the deposition based on all the questions I have and will have based on reading those documents.
MR. WELCH: All right.
MR. LEVIN: So does anybody want to take

a shot at picking another date, or do you want to see how this whole document retrieval and review goes?

MR. WELCH: Let's let that play out a little bit and then pick one after you've seen it. You probably will have a little bit better feel about how long it will be --

MR. LEVIN: Okay.

MR. WELCH: -- and to try to pick a time convenient to everyone.

MR. LEVIN: Okay.

(THE DEPOSITION WAS ADJOURNED AT 5:05 P.M.)

Brandon Smith Reporting Services
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April 5, 2006

In re: LOLKE LLOYD HAANSTRA v. ASBESTOS CORPORATION LIMITED, ET AL
Deposition of: JOHN KELSE
Date: MARCH 30, 2006

The following items checked pertain to the above captioned case:

X ORIGINAL TRANSCRIPT enclosed in protective, sealed white envelope.

EXHIBITS attached to ORIGINAL TRANSCRIPT.

X READING/SIGNING WAIVED NOT WAIVED

When you receive the notarized JURAT and ERRATA SHEETS from the deponent, DO NOT open the sealed envelope. Just attach the notarized sheets to the outside of said envelope and properly retain for the Court.

Signed
Janet A. Orfitelli
Brandon Smith Reporting
Date sealed



STATE OF CONNECTICUT

I, JANET A. ORFITELLI, a Licensed Shorthand Reporter/Commissioner within and for the State of Connecticut, do hereby certify that I took the deposition of JOHN KELSE on MARCH 30, 2006, at the offices of R.T. VANDERBILT, CO., INC., 30 WINFIELD STREET, NORWALK, CONNECTICUT.

I further certify that the above-named deponent was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth concerning his knowledge in the matter of the case of LOLKE LLOYD HAANSTRA VS ASBESTOS CORPORATION LIMITED, ET AL, now pending in the State of California, County of Los Angeles.

I further certify that the within testimony was taken by me stenographically and reduced to typewritten form under my direction by means of COMPUTER ASSISTED TRANSCRIPTION; and I further certify that said deposition is a true record of the testimony given by said witness.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition is taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

WITNESS my hand and affixed my seal this 5th day of April, 2006.

Janet Orfitelli, LSR
Commissioner

My commission expires
July 31, 2007