

FILE NAME: RT Vanderbilt (RTV)

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1 APPEARANCES:

2 REPRESENTING THE PLAINTIFF (VIA TELEPHONE)
 3 LOLKE LLOYD HAANSTRA:
 4 LEVIN SIMES & KAISER, L.L.P.
 One Bush Street, 14th Floor
 San Francisco, California 94104
 By: WILLIAM LEVIN, Esq.
 6
 7 REPRESENTING THE DEFENDANT, (VIA TELEPHONE)
 ELEMENTIS CHEMICALS, INC.
 8
 Acker, Kowalick & Whipple
 888 West Sixth Street, Ninth Floor
 Los Angeles, California 90017
 By: Caroline Van Oosterom, Esq.
 10
 11 REPRESENTING THE DEFENDANT, (VIA TELEPHONE)
 HILL BROTHERS CHEMICAL CORPORATION:
 12 Lynberg & Watkins
 888 South Figueroa Street, 16th Floor
 Los Angeles, California 90017
 By: Ruth Segal, Esq.
 14
 15 REPRESENTING THE DEFENDANT, (VIA TELEPHONE)
 SOCO WEST, INC.:
 16
 Sedgwick, Detert, Moran & Arnold
 One Market Plaza
 Steuart Tower, 8th Floor
 San Francisco, California 94105
 By: Charles Murrin, Esq.
 20
 21 REPRESENTING THE DEFENDANT,
 R.T. VANDERBILT, COMPANY:
 22
 Hawkins & Parnell, L.L.P.
 4000 Suntrust Plaza
 303 Peachtree Street, N.E.
 Atlanta, Georgia 30308-3243
 By: J. Bruce Welch, Esq.
 24
 25

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1 STIPULATIONS

2
 3 It is stipulated by counsel for the parties
 4 that all objections are reserved until the time of
 5 trial, except those objections as are directed to the
 6 form of the question.
 7

8 It is stipulated and agreed between counsel
 9 for the parties that the proof of the authority of the
 10 Commissioner before whom this deposition is taken is
 11 waived.
 12

13 It is further stipulated that any defects in
 14 the notice are waived.
 15

16 It is further stipulated that the reading and
 17 signing of the deposition transcript by the witness may
 18 not be signed before any Notary Public.
 19
 20
 21
 22
 23
 24
 25

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1 INDEX

2 WITNESS NAME: DIRECT CROSS REDIRECT RECROSS

3 JOHN KELSE:

4 By Mr. Levin: 6

By Mr. Welch:

7 EXHIBITS:

PAGE:

9 1 The Notice of Deposition.....7

21 (Exhibits retained by: Attorney Welch)
22
23
24
25

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1 (Deposition commenced at 1:20 P.M.)
2

3 MR. WELCH: And before we get started,
 4 this is Bruce Welch. I just want to put on the
 5 record that we are producing Mr. Kelse today in
 6 response to your notice. We've filed certain
 7 objections to the notice and to the material
 8 sought and we are not waiving any of those by
 9 going forward in the deposition today.
 10

11 MR. LEVIN: I have a question with
 12 relation to that, because I've raised -- this is
 13 the thing that I'm a little bit concerned about
 14 after what you said. Basically we asked for
 15 documents in different categories, and you made
 16 objections and I have no problem to you reserving
 17 the right to assert those objections later, but
 18 you also did produce documents, and I'm assuming
 19 that you produced the documents that are
 20 responsive to the request and didn't hold back
 21 any relying on your objections because if you were
 22 to do that later, I would have no way of knowing
 23 that the documents that you've produced are not
 24 complete in response to this notice.
 25

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

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1 or in the objection. 2 MR. LEVIN: Okay. 3 (At which point the deponent left the room.) 4 MR. WELCH: And Mr. Kelse has gone for 5 coffee, and as soon as he returns I'll let you 6 know and we can get started. 7 (THE DEPOSITION OFF THE RECORD.) 8 MR. WELCH: Mr. Kelse has just returned. 9 MR. LEVIN: Great. 10 11 JOHN KELSE, Deponent, having been first 12 duly sworn by Janet A. Orfitelli, LSR, a 13 Notary Public in and for the State of 14 Connecticut, was examined and testified as 15 follows: 16 17 DIRECT EXAMINATION 18 19 BY MR. LEVIN: 20 Q Okay. Sir, my name is Bill Levin. I 21 represent Mr. Haanstra. Can you state your name? 22 A John Kelse, K-E-L-S-E. 23 Q Okay. This deposition is being taken 24 pursuant to the notice of the person most acknowledge 25 and custodian of records of Vanderbilt, and I sent a	1 that I have, categories of areas of inquiry for person 2 most knowledgeable, is that it? 3 Q Yes. 4 A Okay. 5 Q And I just want you to tell me whichever is 6 easier, either the ones that you believe you are the 7 person most acknowledge pertaining to those or -- 8 A Okay. 9 Q -- you're not. I just want to -- 10 A I see. I see. These are linked -- these are 11 linked to the response to request numbers. I got you. 12 Q Exactly. 13 A I'll have to go through here. I -- when I 14 did take a quick look at this when it came in this 15 morning, the earlier response for request, anything 16 having to do with sales records, who sold what to whom, 17 what year and how much and all of that sort of thing, I 18 am certainly not the person for that. 19 Q Okay. Well, tell me which ones you are the 20 person for, because I don't want to ask you -- 21 A Okay. I see my name listed here, so I want 22 to see who volunteered me for what. 23 Q Okay. 24 A Okay. Let's see. Number five: All 25 documents containing information relating to the mining
Page 7	Page 9
1 copy of the notice. Do you have it there? 2 A Yes, we do. 3 Q Okay. Have you seen that notice? 4 A I reviewed it. 5 Q Okay, good. I'd like to mark that as Exhibit 6 1. 7 (PLAINTIFF'S EXHIBIT NO. 1 FOR 8 IDENTIFICATION, The Notice of 9 Deposition, RECEIVED AND MARKED.) 10 BY MR. LEVIN: 11 Q Okay. With respect to the categories that 12 begin on page six, categories one through twenty-one, 13 sir, if you could look at those and tell me whether you 14 agree that you are the person most acknowledge at 15 Vanderbilt with respect to those subjects, and if there 16 are any that you wish to exclude because you don't feel 17 that you are the person most knowledgeable, let me 18 know. 19 A Okay. Well, I've turned to page six and on 20 page six of the copy that I have, the first request 21 number is request number ten, is that the right page? 22 Q No -- well, if you skim through the document 23 then you will have a heading that says persons most 24 acknowledge. 25 A Oh, I see. Yes, on page ten of the document	1 of talc. All documents you supplied between 1960 and 2 1985. Well, I -- if I took that literally, all 3 documents, what do you mean by that? 4 Q Well, I'm not looking at the documents part. 5 I'm looking at this part that lists subjects. 6 A Right. I'm just looking at the first -- 7 under categories of area of inquiry. I see my name is 8 listed for the first one which is inquiry number five. 9 Q Yeah, I don't -- I don't know. Somebody must 10 have prepared something for you where they listed your 11 name, because the list we sent out didn't list 12 anybody's name. 13 A Well, somebody did. 14 Q Well, can we attach the document you're 15 looking at as Exhibit 2? 16 MR. WELCH: Bill, I'll tell you what 17 that is. That is our objections that was filed. 18 MR. LEVIN: Oh. 19 MR. WELCH: I handed him the wrong 20 thing. I've got the notice, too. 21 THE WITNESS: Oh, good. I'm not 22 hallucinating. 23 BY MR. LEVIN: 24 Q Why don't we go with the notice first. 25 A Oh, dear.

3 (Pages 6 to 9)

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

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1 supplied between the years 1960 and '85. I certainly
2 would defer that to a mining engineer, to a
3 mineralogist, you know, familiar with the mining, but I
4 know the operation and the talc that we supplied
5 between 1960 and 1985 certainly would have only come
6 from two sources, known as the --
7 MR. WELCH: Okay. That's good. He can
8 question you.
9 THE WITNESS: He can question me?
10 MR. WELCH: He's not acknowledge about
11 that area.
12 THE WITNESS: I can tell you something
13 about that.
14 BY MR. LEVIN:
15 Q Okay.
16 A Seven, distributors, no, I don't know. The
17 sale, you know, the business stuff, system of
18 distribution of your talc, business, I don't know about
19 that. Composition of the talc you sold between the
20 years 1960 and '85, I certainly can comment on that.
21 Ten, asbestos content in the talc you sold, well, there
22 isn't any, but yeah, I can comment. The tremolite
23 content in the talc you sold, yeah, I can tell you
24 that. Packaging your talc came in between the years
25 '60 and '85, I can speak to that. I think everything

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1 was always in these fifty-five pound bags.
2 Q Okay.
3 A But you have to remember I started working at
4 Vanderbilt in 1985 so --
5 Q Okay.
6 A Warnings about the hazards associated with
7 asbestos exposure, blah, blah, blah, yeah, I can speak
8 to that.
9 Q Okay.
10 A Your acknowledge of hazards associated with
11 asbestos exposure, well, I was an industrial hygienist,
12 so I can speak to that. When you first learned about
13 the hazards associated -- as a hygienist, I can speak
14 to that as a general category. Comp claims relating to
15 asbestos disease, yeah, I can speak to that. When you
16 first received a Workmen's Comp claim relating to
17 asbestos disease, same as above. Membership in any
18 organization that discussed the hazards associates with
19 asbestos exposure, in general, yeah.
20 Your contention, if you're so content to
21 contend that Lloyd did not suffer exposure to asbestos
22 with his work with talc that you supplied, yeah, I can
23 speak to why I would not think that would be the case.
24 Your corporate history, I'm probably not the best
25 person for that.

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

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

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

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

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

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1 information relating to the composition of the talc
2 that Vanderbilt sold between 1960 and 1985?

3 A Well, I'm familiar with the -- with the
4 analytical reports. They're all --

5 Q That's not my question. My question is, did
6 you yourself, Mr. Kelse, go through that file and pull
7 out production all of the documents containing
8 information relating to the composition of the talc
9 Vanderbilt sold between 1960 and 1985?

10 A No.

11 Q Okay. I have some documents that have been
12 produced that relate to category nine to that subject.
13 Do you know who it is that compiled those documents?

14 A It would be --

15 MR. WELCH: Those were prepared by the
16 attorneys in consultation with Mr. Kelse. Which
17 documents are you referring to?

18 Q Well, I've -- we've asked for documents for
19 category nine. I have a stack of documents, some of
20 which are arguably responsive to category nine, but
21 based on Mr. Kelse's answers to these questions, I
22 don't think that I have all of them. But I'm just
23 trying to find out who it is that selected the
24 documents that I have.

25 A Oh, okay. I see. I'm looking at the

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1 documents now. I notice that they, you know, they date
2 from '85 back.

3 MR. WELCH: And you did provide those
4 documents to us?

5 A Yes.

6 MR. WELCH: Okay.

7 Q While you're looking through those documents,
8 keep in mind this question that I'm going to ask you so
9 you don't have to do it twice. I want to know if these
10 are all the documents from your file that you told us
11 you have related to request number nine, which asks for
12 information related to talc that you sold, that
13 Vanderbilt sold between 1960 and 1985, and whether
14 there are more contained in your file?

15 A There are -- there are other reports I think
16 that predate '85.

17 MR. WELCH: We have -- we asked him to
18 provide us with a -- the documents that were
19 responsive to that request that dealt with the
20 content, the talc -- content of the talc sold
21 between '80 -- between '60 and '85, and those
22 documents are certainly responsive to that.

23 Q Okay. I'd like to see the other documents
24 that haven't been produced. Let me ask you some
25 foundational questions.

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1 How many documents, in your estimation, are
2 there in your file relating to the composition of the
3 talc sold by Vanderbilt between 1960 and 1985, the
4 mineralogic composition?

5 A Oh, I think that's -- the lion's share of the
6 analysis actually has been done in more recent years,
7 the last ten or fifteen years. I mean, they're -- a
8 really heavy duty good analysis has been done in those
9 years, and the earlier reports are not, you know, as
10 thorough or as complete. These reports that you do
11 have from Dr. Wylie actually are pretty good reports,
12 in the sense that they describe very correctly the
13 actual composition of this complex talc, this complex
14 mineral mix, and it also -- also these reports, which
15 were recommended by me to be sent to you go to some
16 length to explain why this talc is so often confused by
17 laboratories, what the problems are, what the issues
18 are, what the analytical criteria difficulties have
19 been. I generally am in favor of giving, you know, all
20 of the stuff.

21 Q Okay. Well, So am I, which is why I asked
22 for all of this stuff, and the stuff that we have may
23 or may not be fairly representative or helpful, but
24 that's not really my point.

25 As a lawyer representing Mr. Haanstra, I'd

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1 like to look at all of the stuff in that file, so I'd
2 like it produced. And we can do whatever we need to,
3 convenience wise, to make that happen, but can I
4 have -- since you are the custodian of records, can I
5 have your agreement to produce the file, the whole file
6 that you yourself say you recommended must be produced?

7 MR. WELCH: You file what you think you
8 need to file, and the lawyers will determine his
9 answer to that question.

10 MR. LEVIN: I don't understand that
11 answer. I've already filed, and as far -- we're
12 sitting here for a deposition of the custodian of
13 the records. I've asked for documents. This is
14 the first category I've inquired about. He's told
15 me there's no documents responsive to this
16 request and that he has recommended that the whole
17 file be produced, and that we do not have a
18 comprehensive set of those records, so I'm asking
19 you if you will agree to produce those records
20 since we're entitled to them and we've asked for
21 them and he has them?

22 MR. WELCH: All right. I'll review that
23 and get back to you on it.

24 MR. LEVIN: What does that mean?

25 MR. WELCH: Just exactly what I said. I

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1 will review that file when I can and see if we can
2 provide that to you.

3 MR. LEVIN: And see if you can?

4 MR. WELCH: Yes.

5 MR. LEVIN: Is there some reason that
6 you wouldn't be able to?

7 MR. WELCH: I have not seen the entire
8 file and I don't know.

9 MR. LEVIN: Well, why don't you have a
10 look through the file and see if you think there's
11 anything that for some reason shouldn't be
12 produced. I have no problem with that, but
13 assuming the documents are of the character that
14 he is describing and he's recommended that they be
15 produced, we'd like to see them and we'd like to
16 see them pretty fast. Can you tell me when it is
17 you'll have a chance to look through those?

18 MR. WELCH: By next week.

19 MR. LEVIN: All right. You know,
20 hopefully I won't have to go to the judge for
21 this, but next week is kind of vague. Can you
22 pick a date by which you will have those
23 documents?

24 MR. WELCH: A week from today.

25 MR. LEVIN: All right. Now I'm going to

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1 remember telling me that?

2 A Yes.

3 Q Okay. It strikes me, though, as a
4 mineralogist that some of the documents and the
5 analysis that were done after 1985 still might be
6 pertinent to the composition of the talc sold between
7 '60 and '85. For example, you might have subsequently,
8 after 1985, analyzed talc that was still vintage circa
9 prior to 1985 that was sitting around somewhere, and
10 you also might conclude as a mineralogist that since it
11 came from the same mine, same vein and same geological
12 area, that the mineralogic analysis that you've done
13 after 1985, it does provide pertinent information
14 relating to the composition of the talc sold prior to
15 1985. Are you with me on that?

16 A Yes.

17 Q Okay. Do you believe that you have
18 documents, that although dated after 1985, contain
19 information which you believe is relevant to the
20 composition of the talc that you sold, Vanderbilt sold
21 between 1960 and 1985?

22 A Absolutely.

23 Q Okay. Can you include those documents also
24 in the documents that you provide to counsel, which he
25 is going to review and provide to me within a week?

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1 reserve the right to continue his deposition on
2 the subject of those documents when I get them.

3 BY MR. LEVIN:

4 Q Number ten, all documents containing
5 information relating to the asbestos content in the
6 talc Vanderbilt sold between the years '60 and '85. Do
7 you have documents like that as part of the universe of
8 records that you are the custodian of as the custodian
9 of health and mineralogic documents?

10 A Well, the analytical documents that I have,
11 you know, are, for the most part, addressing the issue
12 as to whether or not there's asbestos in this talc or
13 not.

14 Q So that would be the same as we just
15 discussed?

16 A Yes.

17 Q Okay. Now, there's one thing that you said
18 that I need to follow up on. The dates here were
19 selected because these are the years between '60 and
20 1985 that the plaintiff claims to have been exposed to
21 Vanderbilt talc. But you've told me that there are
22 documents, and you think actually better documents,
23 superior documents, however you put it, also that are
24 dated, the documents and the analyses themselves are
25 dated after 1985. That's just a preface. Do you

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1 MR. WELCH: I will be happy to look at
2 those, too.

3 Q And just for the record, why it is that the
4 documents that may have been authored after 1985
5 provide relevant information relating to the
6 composition of the talc sold by Vanderbilt between 1960
7 and 1985?

8 MR. WELCH: He didn't say it did. He
9 said it may have.

10 Q Okay. Tell me why it may have?

11 A I'm sorry, could you repeat the question?

12 Q Okay. Tell me why it is that documents
13 authored after 1985 may still contain information that
14 may be relevant to the composition of the talc
15 Vanderbilt sold between 1960 and 1985?

16 A Yeah, well, certainly in a couple of cases
17 there was analysis of talc samples that had been used
18 and animal studies that were done prior to 1985. Those
19 samples have been around and are still, you know, some
20 of them are still available. They've been analyzed,
21 and there are some samples that probably predate '85,
22 but the key thing is that -- is that the product
23 itself, the tremolitic talc that's state mined in
24 upstate New York has a unique mineral blend that has
25 been consistent over the years; otherwise, it wouldn't

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1 be -- you know, be able to be used for the same
2 purposes, so we have quality control programs and
3 parameters, like oil absorption and other parameters,
4 that if they changed, the mineral composition would
5 have to change. And so to the extent that these
6 products have provided the same characteristics, they
7 are the same mineral blends.

8 Q Okay. So talc -- Vanderbilt talc coming from
9 the same two sources analyzed after 1985 would have the
10 same mineralogic characteristics as Vanderbilt talc
11 coming from those same two sources prior to 1985?

12 A Yes. The talc is very unique. It's been
13 described as an unmistakable fingerprint. No other
14 talc is like it, and it's been that way since it was --
15 to the best of my knowledge, since we began mining,
16 Vanderbilt began mining.

17 Q Okay. And if I looked under a microscope,
18 what would -- what would the characteristics of that
19 unique fingerprint be that would separate the
20 Vanderbilt talc from the rest?

21 A Well, do you have a copy of our material
22 safety data sheet?

23 Q Yes.

24 A Okay. It's essentially as described. At one
25 time we actually had a composite material safety data

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1 sheet for all of our talc grades because they all had
2 the same mineral blend --

3 Q Uh-huh.

4 A -- the only difference is that in some cases
5 there may be a little more talc than there is amphibole
6 material. In other cases, the particle size is a
7 little larger or smaller. So, for example, a product
8 called Nyltal 100 is the same, essentially, as Nyltal
9 400, except 400 is a finer line, you know, finer
10 particle grind.

11 Q Okay.

12 A And so --

13 Q Are you telling me, though, like, for
14 example, if I look at the material data sheet under the
15 ingredients section for one of those talcs, let's say
16 Nyltal 100, that with reference to the percentage range
17 of the various mineralogic constituents listed in the
18 ingredients, that I can then identify that talc as
19 Vanderbilt talc and that no other commercial talc would
20 have exactly that mix?

21 MR. WELCH: I object to the form of
22 the question. He can't tell you what he can
23 identify.

24 Q All right. But you're telling me that with
25 reference to the material safety data sheet, that there

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1 are things contained within that sheet that are
2 emblematic signatures, if you will, of Vanderbilt talc
3 that distinguishes it from other talc. And could you
4 just direct me to which part of the material safety
5 data sheet that is?

6 A Actually, I was just looking through some of
7 the documents that Bruce brought with him this morning
8 that I guess were sent to you. There is a -- it says
9 an old material safety data sheet and it has a date of
10 May 1, 1975.

11 Q I see it.

12 A You see it?

13 Q Yeah.

14 A Okay. And there's another one, 1981.

15 Q I see '81 and '83 --

16 A Right.

17 Q -- and '80. I see four.

18 A Right. Okay. Well, you notice, and again
19 these are before my time, but this is still the case to
20 this day, if you look at the four components listed
21 there, you see the percentages?

22 Q Yes.

23 A Okay. You see that these -- these are
24 actually composite material safety data sheets, so for
25 like the one for '81, Nyltal 99, 100, 100HR, and then

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1 there's, you know, another one for '80. You see a
2 range of percent --

3 Q Yes.

4 A -- and to this day, that's -- that's pretty
5 much the range of all the talc products that we sell,
6 so we always give the composition as being talc, twenty
7 to forty percent, and it can vary in that twenty to
8 forty percent; non-asbestiform tremolite, you know,
9 amphibole cleavage material, forty to sixty percent;
10 serpentine, which is in this case antigorite-lizardite,
11 A-N-T-I-G-O-R-I-T-E dash L-I-Z-A-R-D-I-T-E --

12 Q Uh-huh.

13 A -- fifteen to thirty percent --

14 Q Uh-huh.

15 A -- non-asbestiform anthophyllite cleavage
16 material amphibole, one to five percent and very little
17 quartz; one percent if it can be detected at all.
18 Typically it's very hard to detect.

19 Q Okay.

20 A And that is it. I mean, all of our grades of
21 talc that are in those ranges.

22 Q Okay. That's what I was trying to ask you.
23 So it's with reference to section two that a person can
24 identify the constituent ingredients by percentages
25 that are unique to Vanderbilt talc?

8 (Pages 26 to 29)

1 A Yes. And to my knowledge, there's no other
2 talc with that combination.

3 Q Okay. Now, are there other material data --
4 material safety data sheets within your records, other
5 than the five that have been produced to me?

6 A Those five are obviously the material safety
7 data sheets that would have been in -- out there at --
8 you know, prior to 1985. Subsequent to that, you know,
9 after 1985, we have, you know, changed our -- updated
10 our material safety data sheet. We have a specific
11 MSDS for each individual talc grade now, and -- you
12 know, so that's about the only change we've made. But
13 essentially, they're very similar. You know, the key
14 items are similar, the same.

15 Q Now, in the quality control process, is there
16 testing, mineralogic testing performed to determine
17 whether the talc that's coming out of the facility
18 there sort of has this constituent component profile?

19 A Well typically, you know, in a mining
20 operation like this -- I mean, obviously we will do
21 what is known as a bore sample, where geologists will
22 go and try to determine the mineral composition in
23 various areas of the mine, and essentially we're trying
24 to find these blends. We'll find areas where there's
25 more talc, areas where there's more amphibole material

1 and so forth. And these are mined and put in separate
2 hoppers or boxes, if you will, and then these hoppers
3 or boxes are drawn from at certain percentage range --
4 let's see if you want talc at twenty or forty, you take
5 ore that has more talc in it and you blend it with for
6 amphibole, and then -- or more serpentine, and all of
7 that then is put through mills and ground to certain
8 sizes; dictated, you know, by that product that we're
9 trying to make in regard to the percent of each mineral
10 component and particle size.

11 And once it's ground, it is taken to a
12 quality control lab and it's tested for certain things.
13 The main one is oil absorption. And if you don't have
14 the proper blend of minerals and the proper size, you
15 will not meet the specs, you know, for oil absorption
16 and color and there's a couple other criteria.

17 Q Okay. Let's back up a second here. There
18 are two mines, correct?

19 A Vanderbilt opened in 1948 with an underground
20 mine and operated only out of that mine until 1974, and
21 then it acquired International Talc and then drew ore
22 from, and to this day draws ore from a mine known as
23 the Arnold Pit, which is adjacent to the underground
24 mine. We're talking maybe about a half a mile to the
25 west.

1 Q And for the record, the name of the
2 underground mine is?

3 A We call it just Mine One.

4 Q Okay. And the Arnold Pit and Mine One are
5 adjacent to each other, separated by what, a half a
6 mile?

7 A Yeah, if that, and most of the ore -- and in
8 1995, we closed the underground mine and are now just
9 all above ground --

10 Q Okay.

11 A -- and it's all part of the same ore body.

12 Q What county are they in?

13 A That's in -- I don't know, what is it? Is it
14 Jefferson or -- no, that's right, it's St. Lawrence.
15 It's the one to the north.

16 Q St. Lawrence County?

17 A Hold on, let me make sure I get it correct,
18 because it's important. We are in -- let's see. We
19 are in St. Lawrence County.

20 Q Okay. So we have the two mines in St.
21 Lawrence County, Arnold Pit and Mine Number One. And
22 during the mining operations we take what are known as
23 bore samples to -- on the spot trying to determine of
24 the various sort of geographic options within the --
25 within the vein there, what comes closest to the

1 company's specifications for extraction, correct?

2 A Yes, except these bore samples are not taken,
3 you know, at the time or at the spot. These bore
4 samples sometimes have been taken, you know, years
5 before and used by the geologist to plot the ore
6 deposit.

7 Q Okay.

8 A So they sort of have a map, you know, almost
9 like they go down under the ground that already lays
10 out where the ore deposit is, and that would -- some of
11 that was established, you know, in the '40s and '50s,
12 even earlier than that.

13 Q So they do like some sort of geologic
14 mineralogic survey initially and sort of map out where
15 the most appropriate bore samples sort of came from and
16 they use that sort of as the design for where to mine?

17 A Yes, exactly.

18 Q Okay. And this -- you say it's all from the
19 same ore vein. Is there a name for that particular
20 vein there?

21 A Yes, there is, but I would defer that, you
22 know, to a geologist. And there is a history, I think,
23 written on that region and there are different ore --
24 ore sections and veins. It's not one homogeneous rock,
25 that's for sure.

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

1 A Yeah. Sort of like -- I guess if you can
2 picture, you know, you just take like a pipe and you
3 stick it down in the earth and then you pull the pipe
4 out and then you take that cylindrical material out of
5 that pipe and, you know, the distance down and then you
6 see the various layers, you know, the geologic layers
7 and you can determine the mineral composition by taking
8 like bulk samples or samples of some of those layers.
9 There is that --
10 Q Okay.
11 A There is that.
12 Q Well, that's what I'm asking. Why wouldn't
13 that be information relating to the composition of the
14 talc sold by Vanderbilt?
15 A Well, it's a little bit more of a QC, and I'm
16 not so sure -- like, for example, the analysis may just
17 be identified like serpentine versus amphibole.
18 Q Well, we don't know because you don't have
19 the records, neither do I.
20 A Yeah.
21 Q Who has the records?
22 A Well, the facility would have the geologic
23 records of the survey, the survey records, that type of
24 thing.
25 Q What's the name of that facility?

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

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

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1 sampling done at the mine?

2 A Well, there's certainly a lot of -- for
3 occupational health purposes, there's myriad air
4 samples that are taken by myself, by mine safety and
5 health administration, you know, by groups that have
6 studied that mine over the years. There's lots of
7 data. It's probably the most studied mine in the
8 world.

9 Q And where would the documents with respect to
10 the air sampling at those two mine facilities be
11 located?

12 A They would actually be part of what I refer
13 to as the mineral, you know, analysis and
14 characterization of the talc, all of that data.

15 Q And physically would that be with you or at
16 the facility under the direction of Mr. Putnam?

17 A That would be with me.

18 Q Okay. And do you have records reflecting air
19 sampling done at the mine itself?

20 A Yes. It's all part of that whole package.

21 Q Okay. And does that air sampling tell you
22 the level of talc; tremolite and fositite and
23 serpentine, in the air samples taken at the mine?

24 A The samples, air samples have been taken
25 historically over the years and continue to be taken on

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1 know I'm sure by NIOSH, who has taken samples. The New
2 York State Health Department way back when, I think
3 it's probably taken some samples. All of this,
4 whatever material we have I keep, and I never discard
5 it.

6 Q Okay. And I think that those air sample
7 records are relevant.

8 A Oh, I do, too.

9 Q Okay.

10 MR. WELCH: I'll object. Wait. Wait a
11 minute. Wait a minute. Let me put an objection
12 on the record.

13 MR. LEVIN: Sure.

14 MR. WELCH: I believe that they are
15 irrelevant to this case. There is evidence that
16 Mr. Haanstra was ever present at any facility
17 where air monitoring was done, therefore the
18 records are totally irrelevant to whatever --

19 Q Au --

20 MR. WELCH: -- exposure that Mr.
21 Haanstra claims.

22 Q Au contraire. It's your contention, and I
23 think the witness' contention that the ore that came
24 from those mines contains no asbestiform fibers.

25 A No, no, the ore that comes from those mines

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1 and off, cover the following areas: Total dust, that's
2 everything --

3 Q Okay.

4 A -- respirable dust, that's all the dust
5 that's less than ten micrometers in size --

6 Q Okay.

7 A -- whatever it is. Crystalline and silica,
8 whenever we're able to find it --

9 Q Okay.

10 A -- in an air sample, and there have been what
11 you call probably getting fiber samples, which are
12 simply samples that collect on an open-face filter, and
13 then you just measure the particle lengths and widths.
14 And those are generally expressed. The others are
15 expressed in gravimetric milligrams per cubic meter,
16 you know, total dust, respirable dust, crystalline and
17 silica. Fiber samples are expressed in fibers per CC,
18 cubic centimeters of air.

19 There have been -- all of the air samples are
20 not, you know, to determine whether there's asbestos
21 there or not, but there certainly has been a lot of the
22 sampling done, some by myself, some by -- most by mine,
23 safety and health administration, which is the agency
24 that regulates all mines including our own. They
25 periodically take samples. We've had studies, as you

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1 contains no asbestos.

2 Q Fine. And that contention would be either
3 supported or refuted by the air sampling documents, and
4 to that extent they're relevant.

5 MR. WELCH: What does that have to do
6 with what Mr. Haanstra was exposed to?

7 Q Au contraire. Vanderbilt is contending that
8 their ore contains no asbestiform fibers and then the
9 witness said no, we're not, we're claiming they contain
10 no asbestos. And I said that -- and I'll say it again
11 maybe a little differently, that either way, those air
12 sampling samples are relevant because they either
13 support or refute the position of Vanderbilt with
14 respect to the asbestos and asbestiform content of its
15 ore and I would ask that they be produced. So, sir, is
16 there some reason as the custodian of records that you
17 can't produce those records?

18 MR. WELCH: On advise of counsel he
19 will not.

20 MR. LEVIN: He won't? So you're
21 refusing --

22 MR. WELCH: Not until I've had a
23 opportunity to review this.

24 MR. LEVIN: Excuse me?

25 MR. WELCH: Not until I've had an

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

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1 Mr. Haanstra was exposed at the mine, and counsel
 2 is also smart enough to know that the air sampling
 3 records do speak to the issue of the mineralogic
 4 content of the Vanderbilt talc, and as such, are
 5 relevant.
 6 I would like to point out and make a
 7 record, and I have not been jumping up and down
 8 about this, but I did serve a document request
 9 over -- I guess we're coming on -- February,
 10 March -- coming on two months ago on January
 11 27th, 2006. I received late last night a stack
 12 that is no more than an inch of documents that
 13 somebody has abstracted from the universe of
 14 documents that this records custodian, as the
 15 custodian of health and mineralogic documents for
 16 Vanderbilt has.
 17 I am learning through the simple ABC's
 18 of going through the document request, and we've
 19 done only two categories here, that there are a
 20 number of documents that have not been produced
 21 pursuant to this notice and that I am entitled to.
 22 And I'm hearing the complaint that now, at this
 23 moment, counsel doesn't know how long it will take
 24 to review all those documents, and that, I would
 25 submit, is a process that should have begun when

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

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1 Q Okay. So yesterday was the first time you
 2 yourself endeavored to determine which documents, among
 3 the health and mineralogic documents for which you are
 4 the custodian, were responsive to this document
 5 request?
 6 A Yes.
 7 Q Okay.
 8 MR. WELCH: That was in respect to this
 9 case.
 10 Q And you made a recommendation to counsel as
 11 to which documents to produce, correct?
 12 A Yes.
 13 Q And what was your recommendation?
 14 A Well, I feel that our -- the science base is
 15 significantly -- you know, is very significant and is
 16 very strong, and I generally tend to want to provide
 17 everything.
 18 Q You wanted to provide all the documents,
 19 correct?
 20 A Well, certainly those that pertain to health
 21 studies on this talc and those that pertain to the
 22 mineralogy of that talc.
 23 Q And --
 24 A Oh, dear.
 25 Q Hello?

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1 A Hello? Can you hear me?
 2 Q Yeah, I can now.
 3 A Okay.
 4 Q But we did not get all the documents that you
 5 recommended that be produced, correct?
 6 A Well, I think on advisement of counsel, there
 7 was an issue of cutoff dates. I think that's --
 8 that's -- that's -- that's their call.
 9 Q But we didn't get all the documents that were
 10 relevant to health and mineralogical issues that were
 11 authored between '60 and '85, did we?
 12 A I only saw -- I only saw two health studies
 13 that were not in the package that I feel were
 14 pertinent, so I think that was complete.
 15 Q Hello?
 16 A Hello? Can you hear me?
 17 Q Yeah. I don't know why that's happening.
 18 Okay. So there were two studies pertinent to health
 19 issues that were not produced?
 20 A In my -- in my view, yes.
 21 Q Okay. And which were those?
 22 A Well -- and this is good because maybe you
 23 did get them and we just didn't get a copy. The one
 24 that I think that is most important, is the most
 25 up-to-date, most complete mortality studies of our

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1 miners and millers, and that was -- that was entitled
 2 Mortality Among Workers at a Talc Mining and Milling
 3 Facility, Honda, H-O-N-D-A, Annals of Occupational
 4 Hygiene, volume 46, number seven, pages 575 through
 5 585, 2002. That's -- I think that's important because
 6 it's the most complete study there is. And there is a
 7 cell study entitled Mineralogical Features Associated
 8 with Cytotoxic and Proliferative Affects of Fibrous
 9 Talc and Asbestos on Rodent Tracheal Epithelial and
 10 Plural Mesothelial Cells. That's authored by Wylie,
 11 Mossman, Skinner and Marsh, and that appeared in
 12 Toxicology and Applied Pharmacology, 147; article
 13 number T0978276, 1997.
 14 Q I don't immediately recognize those, but I'm
 15 going to ask that those be produced and that I reserve
 16 the right to ask questions about them when I get to see
 17 them.
 18 A Okay.
 19 Q But I do have this question. You seem to
 20 like those two articles and they may be fine articles.
 21 Are there any other health-related documents in the
 22 depository for which you are the custodian, related to
 23 health and mineralogic issues that have not been
 24 produced that I'm looking at today?
 25 A Well, in terms of the -- in terms of the

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

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1 Q I think I have that.
 2 A -- by Lamm.
 3 Q Yeah, I've seen that. I have that.
 4 A Okay. You have that? There is a second
 5 paper by Lamm entitled Analysis of Excess Lung Cancer
 6 Risk in Short-Term Employees.
 7 Q Okay.
 8 A You have that?
 9 Q I think I may have.
 10 A You have that?
 11 Q Okay. I got Gamble.
 12 A Yeah.
 13 Q Got Lamm.
 14 A Yeah.
 15 Q Go on.
 16 A Okay. There is a another one by -- well, The
 17 Mortality Experience of Upstate New York Talc Workers
 18 by --
 19 Q Are you just identifying the ones that are in
 20 our stack now?
 21 A Yeah, the ones that I believe you got.
 22 Q No, I'm going to go through the ones that are
 23 in our stack. What I'm trying to find out, what are
 24 those things that you haven't produced that you're
 25 aware of? And you told me about two.

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

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1 The third and fourth are two Lamm studies. Then
2 there's Stille and Tabershaw, right?
3 Q Okay.
4 A Okay. And then not in the package there is a
5 NIOSH technical report --
6 Q Okay.
7 A -- that's dated 1980 --
8 Q Okay.
9 A -- which I would expect you would have
10 already.
11 Q Okay.
12 A And that's it for the human health studies,
13 okay? Now, the next category of health studies are
14 animal studies.
15 Q Okay.
16 A And there are two animal studies that dealt
17 specifically with Vanderbilt talc.
18 Q Okay. Were they produced in the stack?
19 A Yes, they were. The first one of those is a
20 study by William Smith.
21 Q Okay. Now, you've seen those in the stack so
22 these are the ones that you have.
23 A I have the William Smith. I think I saw a
24 couple of his -- it's actually talking about one study,
25 okay?

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1 Q Okay.
2 A And then the second animal study that's
3 pertinent to Vanderbilt Talc is a study, the famous
4 study by Stanton.
5 Q That's the same hypothesis document?
6 A Exactly. Actually, that's dated -- you know,
7 he wrote several, but the one that I'm looking at is
8 1981.
9 Q Okay. I have that.
10 A You have that? And attached to that is an
11 affidavit from Professor Wylie from the University of
12 Maryland.
13 Q Yeah, I've seen that.
14 A Okay. And the reason that's attached is to
15 identify talc six and seven.
16 Q Okay.
17 A Okay. So that's the two animal studies
18 that's specific to Vanderbilt Talc, okay?
19 Q Yes.
20 A Now, the other study that I did not see in
21 the pack is a cell study, and that's the one that I
22 gave you, Wylie and Mossman and Marsh.
23 Q Okay.
24 A And that is -- that is, to the best of my
25 knowledge, the only health studies; human, animal, cell

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

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

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

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

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

15 (Pages 54 to 57)

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

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1 A Some of it looks like a rod --
2 Q Okay.
3 A -- and some of it -- some of it, you can see
4 pictures of it in that report that I directed you to in
5 '83.
6 Q Okay.
7 A And she -- she goes to some length to explain
8 this because they are extremely unusual. They're not
9 things that, you know, the average lab ever sees.
10 Q Right. They're probably so unusual that the
11 health affects of them haven't been studied in any long
12 term epidemiological studies?
13 A Well, I just told you that we had like five
14 mortality studies of our talc workers. I don't know of
15 too many work populations that have had that many
16 health studies done on them, so I would disagree with
17 you.
18 Q Okay. We'll get to that in a second. .05
19 percent of the fibrous talc is, in your view,
20 asbestiform?
21 A Well, I told you it was a range. It's a low
22 percentage.
23 Q Okay. Let me skip to another category here
24 for a second. If you could look at categories sixteen
25 and seventeen, which ask you for documents relating to

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

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

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1 those mesotheliomas are considered linked to exposure 2 to the talc by the authors of the study for different 3 reasons. In one case, the latency was too short, and 4 the other case the individual worked for about a week 5 in 1948 and tore boilers out for the rest of his life. 6 Q Are those the only two mesotheliomas that 7 you're aware of from talc workers working in these New 8 York State mines? 9 MR. WELCH: Again, we're not going to 10 let him discuss that. 11 MR. LEVIN: Why is that, other than it's 12 not helpful to your case. Is there a legal 13 reason? 14 MR. WELCH: I believe that it has to do 15 with the time frame that the claims were sought 16 in, and I believe that it has to do with whether 17 or not whatever happened would have put Vanderbilt 18 on notice of any condition. 19 MR. LEVIN: I'm not talking about only 20 notice. People go off on notice. 21 BY MR. LEVIN: 22 Q Sir, do you have the expert designation? 23 You've been designated as an expert in this case, are 24 you aware of that? 25 MR. WELCH: He's being presented here	1 questions. 2 BY MR. LEVIN: 3 Q All right. One of the things that you're 4 designated on as an expert is that you're going to 5 testify that there's no none association or connection 6 between Vanderbilt Talc and any asbestos-related 7 disease. Okay, sir, that's one of the subjects. 8 A Yes. 9 Q Okay. And can you tell me all of the cases 10 of mesothelioma that you know that are alleged to have 11 occurred in Vanderbilt miners or millers? 12 MR. WELCH: Are you going to limit that 13 to the '60 to '85 range? 14 MR. LEVIN: No, I'm not limiting it to 15 that, because it runs to whether or not this talc 16 can cause mesothelioma, number one, which is 17 independent of time frame. He's told us the 18 mineralogic characteristics are the same. And 19 number two, it runs to the foundation and my 20 ability to cross-examine about his opinions that 21 there's known association between Vanderbilt talc 22 and asbestos-related disease. And I think I'm 23 entitled to know how many mesotheliomas have been 24 claimed to occur in Vanderbilt miners or millers. 25 MR. WELCH: He is not here prepared to
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1 today as the PMK regarding the issues sought. 2 MR. LEVIN: Are you withdrawing him as 3 an expert, or are we going to have a separate 4 deposition as an expert? 5 MR. WELCH: I guess we can do that. 6 MR. LEVIN: A separate deposition? 7 Well, that will save some time. Are we going -- 8 he's one of your experts, and he's been listed as 9 expert member agent, and a bunch of things he's 10 asked, he's going to be asked to give opinions on, 11 and everything that he's read and reviewed is 12 pertinent to those opinions, so I want to know if 13 he's being withdrawn as an expert, or are you 14 going to offer him at another time in that 15 capacity? 16 MR. WELCH: No, I'm not withdrawing him 17 as an expert. 18 MR. LEVIN: Are you going to offer him 19 at another time in that capacity or am I going to 20 be ask him questions in that capacity today? 21 MR. WELCH: You may ask him questions in 22 that capacity today; however, he is not being 23 presented as an expert dealing with Workers' Comp 24 claims. 25 MR. LEVIN: That's not the focus of my	1 testify about that information today. I have told 2 you I am instructing him not to answer further 3 questions on that ground. 4 MR. LEVIN: All right. Well, we'll see 5 the judge on that. 6 BY MR. LEVIN: 7 Q Is that information contained within your 8 health and mineralogic documents? 9 MR. WELCH: Is what information? 10 MR. LEVIN: Information with respect to 11 claims by people that worked for Vanderbilt that 12 they contracted mesothelioma as miners or millers 13 working with their talc. Is that information in 14 the body of health and mineralogic documents that 15 you have? 16 MR. WELCH: I'm going to instruct him 17 not to answer that question. 18 BY MR. LEVIN: 19 Q Sir, are you going to give me an answer to 20 that or not? 21 MR. WELCH: On advice -- 22 MR. LEVIN: You can't instruct an 23 expert, under California rules not to answer. 24 You cannot instruct an expert not to answer. You 25 can object to their questions, but you can't

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1 instruct them not to answer, so can I have an
2 answer, sir?
3 THE WITNESS: No, I think I'll listen to
4 my counsel.
5 MR. LEVIN: You're refusing to answer?
6 THE WITNESS: Well, you know --
7 MR. WELCH: He was not prepared to
8 testify on this area of questioning today.
9 MR. LEVIN: You are being offered as an
10 independent expert, and for that you have no
11 counsel and you have no right to refuse to answer,
12 and I just want to know if you're refusing to
13 answer. That's a yes or no question.
14 THE WITNESS: Well, yes, I know.
15 MR. LEVIN: I'm going to move
16 accordingly in front of the court to strike you as
17 an expert.
18 BY MR. LEVIN:
19 Q Do you know what the background rate of
20 mesothelioma is?
21 MR. WELCH: Where?
22 A Where? Well, in general.
23 Q In North America.
24 A In North America? Well, there is a range
25 depending upon who you talk to. I think it's something

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

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

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1 by Honda.
2 A Yes.
3 Q Is this study all deaths among all employees
4 of Vanderbilt working at the talc mining and milling
5 facilities between '48 and '89?
6 A That's right.
7 Q Between '48 and '89. And was this study done
8 in 2001?
9 A It was published in 2002.
10 Q Okay. When was it done?
11 A I think it was completed in 1994 or '95
12 and -- but the -- some of the preliminary reports were
13 available, I think, as early as 1990, '91.
14 Q And do you know how -- do you know who it was
15 that asked the authors of this study to do this study?
16 A Of course. Vanderbilt commissioned the study
17 to be done.
18 Q Okay. And Vanderbilt paid for it?
19 A Of course.
20 Q Well, why do you say "of course"?
21 A Well, because the inference is that if a
22 company pays for a study, it's biased and
23 inappropriate, which makes me sick.
24 Q Okay. I'm all confused.
25 A Well, there's a scientific standard that says

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1 a study is good or poor no matter who pays for it.
 2 Q Okay. And this was paid for by Vanderbilt?
 3 A Yes.
 4 Q And in your view, a study that's paid for by
 5 Vanderbilt is biased?
 6 A I didn't say that. I said just the opposite.
 7 There's a scientific standard that decides whether a
 8 study is good or poor, not who pays for it.
 9 Q Oh, no, but didn't you say -- what makes you
 10 sick?
 11 A The fact that when people ask questions about
 12 who paid for something, the inference is that typically
 13 that if a company pays for a study, the study is biased
 14 or inappropriate.
 15 Q No, that's only -- that's one possible
 16 inference.
 17 A Sure, it is. Everybody's biased
 18 unfortunately.
 19 Q Well, let me ask you something: When was
 20 the -- the first worker who was employed by Vanderbilt
 21 that was included in this study, the start date is
 22 1948, right?
 23 A Yes, the study included everyone that ever
 24 worked at Vanderbilt Talc from 1948 through 1989 for
 25 any period of time.

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

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

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

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John Kelse

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1 I'm asking is, as a -- do you still work for
2 Vanderbilt?

3 A Yes.

4 Q Okay. As a person entrusted with health and
5 safety issues at Vanderbilt, have you endeavored to go
6 back and ask the question as to how many people who
7 were Vanderbilt employees contracted mesothelioma
8 between 1989 and 2006, a seventeen-year period after
9 the study was concluded?

10 A I wouldn't do that. I would have to retain
11 an epidemiologist to do that.

12 Q Well, does every --

13 A But I can tell you that, you know, the main
14 thrust of these mortality studies was to look at the
15 lung cancer to the extent that they reported
16 mesothelioma. In deaths that occurred up to 1989,
17 that's what they reported, and as I mentioned to you
18 earlier, there were two that were reported, and both
19 were dismissed by the authors as not likely linked to
20 exposure to the talc for -- and they gave their
21 reasons.

22 Q What were their reasons?

23 A Well, in the one case, which was originally,
24 I think it was a death that occurred in 1975 or '76,
25 which covered the study span of the NIOSH effort, the

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1 first mortality study. The latency was too short for
2 it to be associated with the talc, and in the view of
3 NIOSH, and the second one, I think, was a death, it
4 was, I believe, in 1960 -- 1987 or '86, and it involved
5 an individual that had worked as a surveyor above
6 ground in 1948 for a few weeks, and then he opened a
7 business where he removed boilers, furnaces for thirty
8 or forty years. So the authors did not attribute that
9 mesothelioma to exposure to talc. And those are the
10 only two reflected. The other issue in terms of --

11 Q Wait, wait. Go on.

12 A The other issue in terms of plural, in terms
13 of my responsibility as a health professional, is we
14 did test this talc in one animal study that we
15 contracted with, and then we found that there was
16 another animal study that was done, unbeknownst to us,
17 by Merle Stanton at the National Cancer Institute that
18 used our talc.

19 Both of these studies involved one, an
20 injection, and one a plural implantation of our product
21 as it is off the shelf into the pleura of rodents. In
22 the case of Smith, I think they were injections, and in
23 the case of Stanton it was implantation in a gel.

24 In the case of the Smith study, he tested the
25 product as a whole, and he also broke it down into the

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1 component parts; mainly, the amphibole component parts
2 or tremolite, pure from our materials, and he tested it
3 against tremolite asbestos, and of course Stanton had a
4 lot of asbestos samples in his '72 experiments.

5 So, you know, he had essentially the talc put
6 right on the pleura in two different animal studies,
7 which is generally considered the most sensitive study
8 you can do. And we didn't see any tumors, not any, not
9 one, not even background in either study, and all the
10 components of the talc were certainly present in both
11 of these product samples. And the cell study was an
12 effort to look at the talc fiber itself, and because we
13 wondered, well, what if it was more of it? What if it
14 was concentrated, would that produce an affect in
15 mesothelioma cells similar to what would be seen with
16 asbestos fibers?

17 It certainly was a sample that is not
18 representative of any product or sample that anybody is
19 exposed to. But nevertheless, we did that to test that
20 hypothesis, and these samples, the asbestos samples
21 acted differently in these -- in these mesothelial
22 tracheal -- mesothelial cells than did the talc fiber,
23 you know, in equal amounts.

24 Q You said differently?

25 A Differently, yeah. There were no -- like the

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1 proliferative affects were not there with the talc
2 fibers in the asbestos.

3 Q All right. I want to come back to this.

4 First of all, who commissioned the animal study other
5 than -- not the Stanton one, the other one?

6 A The Smith study. That was -- Vanderbilt did
7 that.

8 Q And how about the cell study?

9 A The cell study. We commissioned that as
10 well.

11 Q All right. Let me -- I want to ask you about
12 this conclusion that this mesothelioma contracted in
13 1975 or 1976 was -- should be dismissed because it was
14 too short for the latency period for mesothelioma, and
15 ask you when that person first started working at the
16 talc mine and facilities?

17 A I -- offhand, I don't know the date, but I
18 think the latency was fourteen or fifteen years.

19 Q He had been working for fourteen or fifteen
20 years?

21 A That -- I think that was the latency, yes.

22 Q For him? Well --

23 A Yeah, for -- when he first started working
24 for Vanderbilt and his -- and his death, I believe that
25 was the latency.

20 (Pages 74 to 77)

3/30/2006

John Kelse

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1 Q Okay. So you believe that he started working
2 somewhere around -- in the early '60s?
3 A Yeah, subtract fifteen from whenever it was.
4 I'd have to look at it and find the date. I believe
5 because it was reported by NIOSH and their vital status
6 cutoff I think was 1978, so it obviously would have had
7 to predate that, so I think it was '76 or something
8 like that, so --

9 Q Okay. And for -- on what basis did people
10 conclude that fifteen years was too short of a latency
11 period to develop mesothelioma?

12 A Well, that's what the -- that's what the
13 researchers, both NIOSH and the University of Alabama
14 concluded. I realize that -- that, you know, people
15 have different spans and low ends and high ends. I
16 know that the average span is typically thirty, forty,
17 sometimes fifty years.

18 Q And you would agree with me that -- how many
19 workers are we talking about that worked at Vanderbilt
20 at any given time?

21 A We generally had --

22 MR. WELCH: In what area?

23 Q In the mines and mills.

24 A The total company.

25 MR. WELCH: Now, wait a minute. I want

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1 from '85 to '95, the highest it would get would be a
2 hundred and seventy, and thereafter, about a hundred
3 would be a ballpark number?

4 A Yeah, in those ranges. I mean, we're not
5 talking about lower than fifty or more than a thousand
6 or anything.

7 Q So you're talking about the -- the entire
8 time that we're talking about, from 1948 forward to the
9 present date, there'd be sort of, on the low end,
10 maybe, you know, seventy people working in the mines
11 and mills that are exposed to talc, and the high end
12 maybe a hundred and seventy, something of that order of
13 magnitude?

14 A Yeah, actually, and since you have the Honda
15 paper --

16 Q Yes.

17 A -- I think that the, you know, the study
18 population and they lost very few to follow up. It was
19 very few people they lost, and I think the cohort was
20 eight hundred and eighteen, so, that, you know, eight
21 hundred and eighteen people that worked for Vanderbilt
22 Talc from 1948 through 1989 for any period of time.

23 Q Right. And clearly from the numbers you just
24 gave me, some of those people must have worked there
25 for a short period of time and then left?

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1 to make sure we're on the same page here. When
2 you say the mines and mills, you're talking about
3 up at Gouverneur Talc Company, not in Norwalk and
4 not in other locations?

5 MR. LEVIN: Well, any location where
6 they're exposed to talc is really what I'm trying
7 to get at. I don't want to include people that
8 wouldn't have any talc exposure.

9 A Well, the work population varied. I can give
10 you -- I can give you basics. I know after 1974
11 through about 1984, say ten years, I think probably
12 we're talking about maybe a hundred and twenty or a
13 hundred and thirty. From about 1985 through around
14 1995 or 1998, the highest we would go is usually about
15 a hundred and seventy some. And since 1997 or '98, I
16 think we now have close to -- I think it's just a
17 hundred. Prior to 1974, I'm not certain, but it would
18 have to have been probably seventy maybe eighty --
19 seventy to ninety, you know, if that. That's a
20 rough -- a rough range.

21 Q Okay. So the number of people working in the
22 mines and mills that would have been exposed to talc in
23 the pre-1974 years, would be in the sort of seventy to
24 ninety range; from '74 to '84, it would be like a
25 hundred and twenty to a hundred and thirty people. And

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1 A Yeah. And that was one of the reasons why we
2 kept doing the update study because we did see excess
3 lung cancer, you know, as the studies say, and that
4 excess lung cancer, about two and a half times what you
5 would expect to see, persisted in every single study.
6 And, of course, that is a concern, but the issue was
7 that excess lung cancer associated with exposure to the
8 talc, or was it associated with some other etiology.

9 For example, smoking is a usual one, you
10 know, that you have to look at closely. And one of the
11 reasons why we asked that question was that we found
12 that the excess lung cancer that was -- kept being
13 reflected in each of these mortality studies, was
14 always among the people who worked for the least amount
15 of time. In fact, over fifty percent of the lung
16 cancer cases are people who worked for less than a
17 year. Some, you know, one day, four days, seven days,
18 eighteen days, versus people who were there up to, you
19 know, for years, up to twenty-some years. They were
20 not the ones who were showing the excess lung cancer,
21 and that runs contrary to what you would expect.

22 And so that's why we kept -- that's why we
23 kept doing the update studies to see what was going on.
24 That's why we did the case control to figure out
25 whether smoking was playing a role or not. We had to

21 (Pages 78 to 81)

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1 do that to figure that out.

2 Q Okay. And what did you conclude?

3 A Well, it turned out that the more plausible
4 explanation for the excess lung cancer was, in fact,
5 smoking. It turned out that we do, unfortunately, have
6 twice the rate of smoking, you know, in that work
7 population than in the white male population in the
8 U.S. And we also -- the Honda study is important
9 because we -- we -- and correctly so. We used to be
10 criticized that, well, you know, tenure, you know, the
11 time duration that you're on the job was used as a
12 surrogate for exposure. But, you know, that's not the
13 best exposure indicator. The actual dust levels are
14 the best level indicators. And, you know, if you don't
15 have dust exposure data that -- to cover all the years
16 on the job, tenure is your next best bet.

17 And so, when we pointed out that we had this
18 problem, where, why were we seeing the excess among the
19 people who seemed the least exposed in terms of time,
20 some researchers would say, well, maybe that's because
21 the people that were there for the shortest time seemed
22 to have a big exposure; they just had more of an
23 exposure. Their lungs couldn't clear the dust as
24 rapidly because the exposure concentration was greater,
25 and so maybe that's the explanation because it does run

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1 contrary to what you see in asbestos-exposed
2 populations. So that's -- that's why we did the update
3 study. One of the reasons we did the final update
4 study was to try to get an actual exposure in terms of
5 dust to see whether there was a correlation between
6 those who were exposed to the most dust and lung cancer
7 or not.

8 And that's why the Honda study is important,
9 because as it turned out, the excess lung cancer or the
10 people with lung cancer was actually thirty-three --
11 thirty-one, thirty-two percent less exposed to dust
12 than the people who were not. And once again, that's
13 totally opposite in what you see in asbestos exposed
14 populations.

15 Q The lung cancer?

16 A Yeah, for lung cancer. And also we noticed
17 that for non-malignant respiratory disease, or, you
18 know, pneumoconiosis, which can happen with exposure to
19 any mineral dust, including our talc or anybody's talc
20 or any mineral dust, it was opposite, in that the
21 people who were there the longest and were exposed the
22 most, tended to -- we saw a higher prevalence of
23 pneumoconiosis or talcosis.

24 Q You would agree with me that --

25 A It should be the same. You know, it should

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1 be --

2 Q You would agree -- excuse me?

3 A I'm saying you should see -- they should go
4 in tandem.

5 Q Okay.

6 A You shouldn't see a difference there.

7 Q Did any of these studies, the Honda being the
8 most recent, look specifically for the disease
9 mesothelioma?

10 A Well, it was a mortality study, so they
11 listed every cause of death, including mesothelioma.

12 Q So they had to rely -- they relied
13 essentially on the death certificate, whatever they
14 said?

15 A Yeah, and I'm not an epidemiologist, but my
16 understanding is that, you know, the thing is -- what
17 happens is you obviously have to get all the records
18 from the company for everybody that ever worked there,
19 and then you have to figure out, you know, where they
20 are, because a large group of them have, you know, have
21 moved away or retired, and so forth. And then you have
22 to figure out their vital status, alive or dead, and
23 where did they die, and then you have to send off and
24 get their death certificates from all these different
25 jurisdictions.

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1 This is why it's not something you do, you
2 know, a company does that. That's why you hire people
3 to do this because it's a huge project.

4 Q You don't know whether anybody specifically
5 in this study looked at the pathology to determine
6 whether thirty-one punitive lung cancer deaths were
7 actual lung cancers?

8 A No, they would have to rely on the death
9 certificates, and they were -- I think they were
10 reviewed by someone known as a nosologist, who sort of
11 looks at the death certificate to see whether there's
12 any reference to whether it's a primary or underlying
13 cause, you know, that type of information.

14 Q Okay. And you haven't gone to the local
15 hospitals and coroners and that sort of facilities that
16 maintain records of death in the counties, from St.
17 Lawrence County, to determine how many mesothelioma
18 deaths there were in Vanderbilt workers after 1989?

19 A No.

20 Q Okay.

21 A We do medical surveillance, but that's for
22 morbidity.

23 Q Was there any other reason for rejecting this
24 mesothelioma that occurred in '74, '75, other than the
25 latency issue? Was he believed to have worked

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1 somewhere else where he was exposed to asbestos like
2 you talked about with the second person?

3 A Not to my knowledge, I don't know whether he
4 did or didn't.

5 Q Okay. Is that underlying -- is the
6 underlying -- we talked about it. Would that be in the
7 underlying data that you have in your files?

8 A No, that would not be in that detail. I just
9 have a little more detail on the actual thirty -- I
10 think it was thirty-one cases in the last -- of lung
11 cancer. I just had a little more detail in the
12 individual cases in my file than is reflected in the
13 report that you have, but nothing beyond that.

14 Q Do you know how the company got involved with
15 Dr. Honda in Japan to do this study?

16 A Well, actually, we contracted with the head
17 of the epidemiology department there, I believe was
18 Elizabeth Delzell, D-E-L-Z-E-L-L.

19 Q Uh-huh.

20 A And all the preliminary reports were done by
21 Elizabeth Delzell and Yasushi Honda was, I believe, a
22 grad student. And I don't know why he ended up being
23 the primary author, but really the study -- the bulk of
24 the work was done by Elizabeth.

25 Q You would agree with me, based on your prior

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1 testimony, that Vanderbilt Talc workers do get
2 interstitial fibrosis?

3 MR. WELCH: Would you repeat that?

4 I didn't hear the first part of your question.

5 Q You would agree with me, that based upon your
6 prior testimony that you gave recently, that Vanderbilt
7 Talc workers do get interstitial fibrosis?

8 A Well, yeah. Any talc worker is overexposed,
9 whether it's our talc, Vermont talc, Texas or anywhere
10 else. If they're overexposed, it is possible to get
11 talcosis, which is a pneumoconiosis. It looks
12 radiographically similar to what you see with
13 asbestosis or kaolinosiis or any of the minerals, and in
14 our workers, we look at them every two years, actually
15 for that. And I can tell you, and I can provide this
16 as well, as we're sitting here today, about sixty
17 percent of our guys have worked for twenty years or
18 more, and we only have one individual in that entire
19 work group that shows any even modest signs of any
20 interstitial fibrosis at all, and that individual came
21 to us from -- in 1974, another talc operation.

22 Q And when did you -- and do you attribute that
23 to improved industrial hygiene at the mines and mills?

24 A Well, the Vanderbilt mine, and there's some
25 studies by the New York Health Department in which they

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1 reflect dust data. In those days, back in the '50s,
2 '40s and '60s, they reported it in particle counts, you
3 know, million particles per cubic foot. And there are
4 these published data out by the New York State Health
5 Department that compares some of these dust levels at
6 the various mines in that region at the time --

7 Q Uh-huh.

8 A -- and they're something on the order of ten
9 to a hundred times greater than whatever was reported
10 at Vanderbilt. I mean, as a hygienist, I always feel
11 that the dust could always be lower and lower, but
12 compared to the other talc operations in that region
13 that are all gone now, it is significantly less.

14 Q When did Vanderbilt first begin to take
15 industrial hygiene measures in its mines and mills to
16 keep the dust levels down?

17 A Well, to begin with, the mine and the mill,
18 the mill in particular, was designed in 1948. I mean,
19 now it's not modern, but it was considered modern dust
20 control technology, in that the mill was kept sort of
21 under a positive pressure, or rather a negative -- you
22 know, positive pressure.

23 Q Yeah, I know what you mean.

24 A So that, you know, when the ore was moved in
25 the various ducts and so forth, the air would go into

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1 the ducts rather than come out. And that -- that --
2 that was a major improvement in the mine. The company
3 always used what's known as wet drilling, where you
4 spray water, you know, as you drill --

5 Q Uh-huh.

6 A -- and that was always done at Vanderbilt,
7 whereas in the other regional mines, that was never
8 done.

9 Q Okay.

10 A And these two things -- these two -- I mean,
11 there's many others, but, I mean, these two
12 technologies, wet drilling, positive, you know,
13 pressure mill, closure of the ore movement and so
14 forth, basically made the Vanderbilt mine and mill
15 significantly less dusty, you know, than the other
16 ones.

17 Q Okay. But --

18 A And then we continue to take air samples to
19 be sure that the dust levels are kept, you know, at a
20 reasonable level and try to make them as low as we can
21 get them.

22 Q Okay. So let me just -- there's always been
23 positive pressure at the mine and mill?

24 A At the mill. In the mine, it's use of water.

25 Q Okay.

23 (Pages 86 to 89)

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1 A You know, sort of --
 2 Q Water --
 3 A -- water like when you drill, which is one of
 4 the dustier activities.
 5 Q Right. Wet drilling. Okay.
 6 A Yeah. And that suppresses the dust levels.
 7 Q And that's always been the case, to keep the
 8 dust levels down?
 9 A Yeah.
 10 Q And how long have they been taking air
 11 samples there?
 12 A Well, the different groups took them over a
 13 period of years. As I mentioned, the New York State
 14 Health Department has some data that -- that would be
 15 from Vanderbilt, you know, that dates back, I think,
 16 the early '50s, you know, '51 or '52. And then there's
 17 some data from the Mine Safety and Health
 18 Administration. I think that may date back, certainly
 19 into the '70s, and I've been taking air samples there
 20 myself, even before I started working for Vanderbilt in
 21 1985, around 1982, in terms of total respirable dust,
 22 that sort of thing.
 23 Q Okay. So --
 24 A So there's quite a bit -- there's quite a bit
 25 of dust data, and I must say it's stayed pretty -- it's

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

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

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1 surveillance is excellent. But we did see people who
 2 showed, you know, signs of pneumoconiosis in the '70s
 3 and '80s, and almost invariably these were people who
 4 had exposures to these very high dust levels elsewhere.
 5 Q Other than positive pressure, the wet
 6 drilling, providing masks to your employees, what other
 7 things did Vanderbilt do to keep the dust down during
 8 the time periods we've been talking about, '50s, '60s,
 9 '70s and '80s?
 10 A Well, those are certainly the key ones, but
 11 there was always -- there's -- all of the typical
 12 controls include housekeeping, where you, you know, you
 13 try to remove the dust from rafters and from the
 14 floors, you know, so it's not regenerated when fork
 15 lifts roll over them or the vibration of the equipment
 16 regenerates the settled dust, so you try to vacuum, you
 17 know, that material so it does not become entrained
 18 again in the air. And more recent years, last ten
 19 years or so, we've provided like operator booths in the
 20 mills, where -- where the controls are in a secluded
 21 room where an operator can, you know, push the buttons
 22 and monitor the equipment without being actually out on
 23 the -- out on the mill floor. That's a big control.
 24 One of the biggest dust areas that any mine
 25 is concerned about is the packing area, as you can

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

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

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

20 (THE DEPOSITION OFF THE RECORD.)

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

22 second then.

23 BY MR. LEVIN:

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

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

4 Q What kind of insurance company?

5 A Well, I worked for Hartford Insurance
6 Company.

7 Q That one of its insurers?

8 A At the time it was, yes.

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

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

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

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

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

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

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

16 A I would say so, yes.

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

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

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

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

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

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

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

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

24 A Yes.

25 Q And are those among the materials you've

25 (Pages 94 to 97)

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

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1 take it or how that was done, I don't know.
 2 Q Okay. You don't know who initiated the
 3 monitoring of the dust data at Vanderbilt mines that
 4 the New York State Department of Health did in the
 5 '40s?
 6 A No, I don't know. I don't know whether that
 7 was a routine or a special project, I don't know how
 8 that worked.
 9 Q Okay. And do you know who initiated the
 10 Bureau of Mine Safety air monitoring --
 11 A Well, that would be the mine act, which tells
 12 the Mine Safety and Health Administration that they
 13 must, you know, visit each mining facility. If it's an
 14 above-ground mine, twice a year, if it's an underground
 15 mine, four times a year, and part of those visits
 16 include, on occasion, dust sampling.
 17 Q And when did that begin?
 18 A Well, off and on, probably -- I think I've
 19 seen MSHA data certainly back into the early '80s.
 20 There may be some in the late '70s. I don't think MSHA
 21 was in existence prior to '75. I'd have to check, but
 22 I think that's true.
 23 Q Okay. And could you tell me upon what date
 24 Vanderbilt Talc first began to warn its customers about
 25 the risk, health risks associated with excessive

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

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

26 (Pages 98 to 101)

1 MR. WELCH: We're not picking on you. I
2 can't read it either.
3 Q But it doesn't seem to have a section 5.
4 A Yeah, it may not. I mean, I'd have to look
5 but I -- as I said, it wasn't common for companies to
6 even produce material safety data sheets in the '70s. I
7 think the -- the OSHA Hazcom standard, I think, took
8 effect in the early -- in the mid '80s or something. I
9 think that required all companies to produce them up to
10 a certain standard, as stipulated in the Hazcom
11 standard.
12 Q Okay. In the earliest -- what is the
13 earliest date that there was a caution label, or
14 warning label put on the actual bags of talc sold,
15 health warning?
16 A Health warning in the sense of what? Do not
17 breath excessive dust or something like that?
18 Q Yeah.
19 A I don't know. I -- I think I've seen, in the
20 '70s for sure. Earlier, I'm not certain. I'd have to
21 check. I would to have look.
22 Q Okay. Well, let me direct your attention to
23 a document that you've produced to me --
24 A Uh-huh.
25 Q -- interoffice memorandum, date, January 19,

1 1978 to Mr. Streitmatter from Mr. Erdman. Copies to
2 Vanderbilt, Noland, Harvey, Thompson and Niehaus.
3 A What number is that? I'm sorry.
4 Q What -- say that again?
5 A Do you have the number?
6 MR. WELCH: This is the ones we sent
7 him.
8 A Oh, the ones you sent him.
9 MR. WELCH: I showed you that.
10 A That's the health stuff.
11 MR. WELCH: I think that's what he's
12 talking about.
13 Q I'll read it to you while you're looking for
14 it.
15 A Yeah, I think I can find it.
16 Q Okay.
17 A Okay. Yeah. It's dated January 18th, '78?
18 Q 19th.
19 A 19th or 18th? This says 18th. Am I wrong?
20 MR. WELCH: This one says 18th.
21 Q Really? Well --
22 MR. WELCH: Well, there's two.
23 Q There's one, if you turn the page.
24 MR. WELCH: Yeah, there's one on the
25 18th, one on the 19th.

1 Q Yeah. And in the 18th -- let's go to the
2 18th then. It says Hal Harvey is forwarding you copies
3 of this letter dated January 18th, 1978. On the
4 subject of talc labeling, when you start this program,
5 you will be hand testing the bags, and it's probably
6 not possible to apply the caution label to every bag.
7 And there there's a bunch more language, but
8 would this, in your mind, mean that the first labels
9 warning customers, labels on the packaging, talc
10 packaging warning customers about health hazards began
11 in 1978?
12 MR. WELCH: If you know.
13 A If I know? I don't know for sure. It would
14 suggest it.
15 Q Okay. So you would agree with me that based
16 on at least this letter, the suggestion is that
17 Vanderbilt first began putting a health warning on its
18 talc packaging sometime around January 18th, 1978?
19 A That's what the memo suggests. Whether it's
20 true or not, I don't know.
21 Q Okay. And then -- all right. Have you
22 looked through -- one of the things I asked about was
23 warnings on packages. Have you looked through your
24 documents to determine whether there are any other
25 documents on the subject of -- warnings on packages and

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

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1 Q -- '60 and 1985, have to spoken to anyone to
2 inform yourself as to things that you may not have been
3 aware of that may have proceeded you?

4 A Well, I have a file that I believe was a
5 historical record of labels and MSDS's, and the
6 documents that you have, the MSDS's that you have,
7 these two letters came from that file.

8 Q Okay. Well, could you produce that file to
9 counsel so I can see the rest of it?

10 A I can look at it. I'm not sure that you
11 don't pretty much have it, but --

12 Q Well, that's what I'd like you to do. My
13 earlier question was whether you've spoken to anybody
14 at the company about the warnings and packaging,
15 vis-a-vis health, in order to better inform yourself in
16 your capacity as the person most knowledgeable in
17 preparation for this deposition?

18 A I've spoken to, you know, Vanderbilt
19 employees about historical labeling. I wouldn't say I
20 did it in preparation for this deposition. Just out of
21 curiosity and understanding, I have done that. I
22 particularly, you know, as it pertains to these --
23 these issues on, you know, the mineralogy in the
24 confusion and so forth, I kind of wanted to know the
25 history of that a little bit.

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1 Q Okay. Okay. Have you gone back through the
2 records, particularly that file, to see if these are,
3 in fact, the only documents pertaining to the history
4 of packaging and warning, vis-a-vis health hazards of
5 Vanderbilt?

6 A I'll look again. I think they are, but I'll
7 look again.

8 Q Well, when did you last look at them?

9 A Well, I probably -- within a year, I would
10 say.

11 Q Did you -- but you didn't look at them
12 specifically --

13 A For this case?

14 Q -- with respect to the requests that have
15 been made in this notice and production of documents in
16 this case?

17 A No.

18 Q In fact, the first time you did anything with
19 respect to the notice and request for documents in this
20 case was yesterday, correct?

21 A Yes.

22 Q All right. Turning to January 19th. I can't
23 read the caution label, but I can read the text above
24 it, and it says "We are the first one to admit that
25 these labels are not real good, but it's the best we

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1 can do."

2 And that's from Mr. Streitmatter, from
3 Erdman, CC Vanderbilt, Noland, Harvey, Thompson and
4 Niehaus. You see that?

5 A Yeah.

6 Q Do you know what they meant, that it was the
7 best they could do?

8 A No. It could mean any number of things.
9 Sometimes I know that labeling issues that we have now,
10 very often it's the size of the letters and how they're
11 going to fit on the bag, you know, issues like that.

12 Q Okay.

13 A How they are going to get on the bag. Is it
14 going -- do we have to stencil them on, can we have the
15 bags preprinted, you know, there's issues of that sort,
16 so I really don't know in what way they meant this.

17 Q Okay. You know what it means when they say
18 the labels are not real good?

19 A That's what I mean, I don't really know what
20 the meant by that.

21 Q Hopefully they're better than the copy I
22 have.

23 A Hopefully they are, yeah. I think that these
24 two -- I think they probably -- it looks like they say
25 the same thing, don't you think?

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1 Q I'm assuming that, too.

2 A Yeah.

3 Q Now, who were these people that were copied
4 on this --

5 A Okay.

6 Q -- office memorandum within the company?

7 A Well, it was two -- let's see, the one on
8 19 -- January 1978, Vern Steitmatter.

9 Q Uh-huh.

10 A You have -- if my memory serves me correctly,
11 it's -- the Streitmatter was sort of the -- like the
12 vice president in charge of production. He oversaw the
13 production facility, the chemical plant and the
14 mines --

15 Q Uh-huh.

16 A -- okay? And he was an engineer. George
17 Erdman, who was writing, you know, to Mr.
18 Steitmatter --

19 Q Uh-huh.

20 A -- George Erdman is a mining engineer, and he
21 was the general manager for Gouverneur Talc.

22 Q Okay.

23 A Now, you want to know about the CC or XC or
24 whatever it is there?

25 Q Yeah.

28 (Pages 106 to 109)

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1 A Well, obviously H.B. Vanderbilt is -- was the
 2 CEO of the company.
 3 Q Uh-huh.
 4 A T.T. Noland was the vice president,
 5 administrative, you know, chief executive officer.
 6 Q Uh-huh.
 7 A A.M. Harvey was in some ways my predecessor.
 8 Q Uh-huh.
 9 A C.S. Noland is actually a -- Dr. Thompson, he
 10 is a mineralogist --
 11 Q Uh-huh.
 12 A -- and was in charge of research and
 13 development, minerals. And J.P. Niehaus was the
 14 director of research and development.
 15 Q Okay.
 16 A Okay.
 17 Q Is Mr. Harvey still alive?
 18 A I believe so.
 19 Q When you say he was sort of your predecessor,
 20 what do you mean?
 21 A If -- well, he -- he -- I think he was called
 22 the director of environmental affairs, who oversaw the
 23 production, the original production and material safety
 24 data sheets and had a lot to do with product
 25 registration issues.

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1 A woman worked for him who was an attorney
 2 that did patents, and when issues arose over, you know,
 3 asbestos definitions and regulations and so forth,
 4 beginning with the, you know, first OSHA standard in
 5 1972, he was given the assignment to basically, you
 6 know, monitor that, and whether or not it pertained to
 7 Vanderbilt, and if it did and how and so forth.
 8 Q Do you know where he lives?
 9 A He lives in Wilton, I believe, Wilton,
 10 Connecticut.
 11 Q When was the last time you talked to him?
 12 A I think I saw him about -- it had to be maybe
 13 seven or eight months ago.
 14 Q Okay. Who else on this memo is still alive?
 15 A Well, on the January 18th -- I'm sorry, you
 16 mean the January 19th?
 17 Q Yes.
 18 A Dr. Thompson is.
 19 Q And where does he live?
 20 A He lives in Norwalk, Connecticut here.
 21 Q Okay.
 22 A And I don't know -- I know, you know,
 23 Mr. Vanderbilt is deceased; Mr. Noland is deceased;
 24 Mr. Streitmatter is deceased; Mr. Erdman is still
 25 alive. He is retired. He lives in North Carolina.

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

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

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

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

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

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

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

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

5 Q All right. Now, are you familiar with the
6 2002 Hall, Abraham and Case article called Mesothelioma
7 Among Workers in Asbestiform Fiber Bearing Talc Mines
8 in New York State?

9 A Yes.

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

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

18 Q Okay. How many talc mines are there there?

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

24 Q But how close to each other were they?

25 A It varied. I would say within a radius of

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

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

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

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

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

16 Q And how many talc mines are there in
17 Gouverneur?

18 A Well, there are none in Gouverneur. As of
19 1974, the only talc operation in that region has been
20 Vanderbilt.

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

23 A Well, there are no more in operation.

24 Q How about historically?

25 A Probably have to -- I think there are

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

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

5 A Yes.

6 Q Okay. And you know Dr. Abraham?

7 A Yes.

8 Q And Dr. Hall?

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

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

13 A As a supplement, yes.

14 Q Yes. And you said that why?

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

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

19 A Well, it's a case study.

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

22 A I believe so.

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

30 (Pages 114 to 117)

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1 that?

2 A Yes. I believe it was the county to the

3 south of St. Lawrence. I think was Jefferson County.

4 Q Jefferson County?

5 A That's right.

6 Q And -- and -- and -- and -- and what would

7 your hypothesis be for why that is?

8 A I don't know. All the talc mines were

9 located in St. Lawrence.

10 Q Okay. Does everybody who works in the St.

11 Lawrence talc mines live in St. Lawrence?

12 A I don't know. My guess is there may be a

13 few, but that would be a guess.

14 Q All right.

15 A Oh, no. It would be the other way around.

16 Likely more would live in the county where the talc

17 mines are than in the county where the talc mines are

18 not.

19 Q Okay. But this is an article about talc

20 miners and millers not just people, correct?

21 A Well, he -- he uses -- he uses the mortality,

22 you know, the mesothelioma rates in New York State as a

23 support. He uses it as an indicator, suggestive

24 indicator, and I think he says it with some

25 qualification that the elevated mesothelioma rate in --

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1 what is the county to the south, Jefferson?

2 Q Yes.

3 A He suggests that that could be due to an

4 environmental exposure prompted by talc operations.

5 And he doesn't say -- he can't say that for an absolute

6 certainty, he just says it's suggestive.

7 Q All right. It says eight talc miners have

8 been previously identified in other studies as having

9 mesothelioma. You see that?

10 A Uh-huh, yes.

11 Q And now they find five new cases of

12 mesothelioma among talc workers, you see that?

13 A Yes.

14 Q Now we're talking about fourteen cases of

15 mesothelioma among talc workers, is that right?

16 A I don't think so. I think your arithmetic is

17 probably off. He basically talks about --

18 Q Thirteen. Thirteen.

19 A He basically talks about what he refers to as

20 five new cases --

21 Q Yeah.

22 A -- of which there's only histology slides

23 available, I think, for three. The other -- the other

24 two were there because they showed up either on a comp

25 record or on a death certificate.

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1 Q Sounds like the -- do you have histology

2 slides for your Honda study?

3 A Well, the Honda study is just a straight

4 forward epidemiologic mortality study. They wouldn't

5 be doing pathology, you know, to confirm or deny, you

6 know, a diagnosis. They have to rely on the death

7 certificates.

8 Q They didn't use histology slides?

9 A No, you would be -- it would be -- no, it's

10 just a straight forward classic epidemiologic mortality

11 study that relies upon death certificates that are

12 confirmed and gone over by a nosologist.

13 Q Okay. So they didn't use histology slides in

14 the Honda or in the Abraham study, correct?

15 A Or in the Abraham study?

16 Q Correct.

17 A No. He did have -- he did have slides or

18 tissue samples for, I think it was three of the cases.

19 I believe that --

20 Q Okay. So why are you quibbling with the

21 absence of histology slides, I'm trying to get at?

22 A Well, you asked me about the Honda study.

23 The Honda study is a mortality study that operates off

24 of death certificates.

25 Q I understand that. But you were willing to

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1 accept the death certificates in the Honda study as

2 showing --

3 A What?

4 Q -- no increase in mesothelioma?

5 A No, they reported to.

6 Q But you're requiring histology slides in the

7 other paper, I'm trying to figure out why?

8 A Well, these are two very different types of

9 studies.

10 Q I understand that, they're different in many

11 ways, but the one way they're common is that neither

12 one relied on histology.

13 A Well, you know, look --

14 Q Partially.

15 A First of all, to try to compare, you know,

16 a -- a lung-burdened case study with an epidemiologic

17 study is problematic to begin with. Secondly, you

18 know, part of the -- one of the reasons it's

19 problematic is because you really don't have, in the

20 whole study, really a good work history on any of

21 these -- any of these cases or controls. You don't

22 have good descriptions of why the -- you know, the

23 controls were picked. He had some forty some to look

24 for, why did he pick thirteen? What prompted that?

25 What about why -- there's lots of issues,

31 (Pages 118 to 121)

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1 lots of issues about the comparison between what's
 2 found in the various lung tissues and whether or not
 3 the use of SEM selected electron microscopy is
 4 sufficiently sensitive to pick up what Hull refers to
 5 as commercial asbestos. Most mineralogists and
 6 analysts will tell you it is not sensitive enough for
 7 that.
 8 Q You could -- sir --
 9 A There's a lot of issues.
 10 Q -- you could always find flaws in every
 11 paper, and I can find many in lots of papers, but
 12 wouldn't the responsible thing be to do when you have a
 13 finding --
 14 A Yeah.
 15 Q -- that says, you know, there's -- there's
 16 mesothelioma occurring in talc workers, and
 17 mesothelioma is a disease that occurs in one per
 18 million in the general population per year and only one
 19 per ten thousand lifetime risk.
 20 Now, there could be a lot of explanations for
 21 this having to do with other employment and whatnot,
 22 but one of the possible explanations is that something
 23 about talc mining is causing mesothelioma and I've got
 24 to look at this further. Wouldn't that be the
 25 responsible way to approach this?

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1 A If you didn't have any animal data that
 2 suggests otherwise; if you didn't have epidemiologic
 3 work that suggests otherwise; if you didn't have
 4 morbidity studies and medical surveillance programs or
 5 you look at the lung disease guides every couple years
 6 and compare them against what is seen in true asbestos
 7 exposed populations for similarities, that would be the
 8 case, but that's not the case --
 9 Q Well --
 10 A -- a lot more is known about this.
 11 Q -- in almost every case involving chrysotile
 12 products, including the counsel representing
 13 Vanderbilt, come up against the issue of animal
 14 studies, their response is animal studies are not
 15 reliable, because they show chrysotile causes
 16 mesothelioma in animals, and we can't rely on animal
 17 studies, so let's throw that out.
 18 A Well, when you take tremolite asbestos, for
 19 example, and you put it right on the pleura of just
 20 about any animal, and you take the non-asbestiform
 21 variety of the tremolite and put it in the same place
 22 under the same test conditions, every single time you
 23 see totally different results. That's pretty
 24 consistent.
 25 And you know from human studies that people

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1 who are actually exposed to asbestos do show these
 2 diseases, and other human studies of people who are
 3 exposed to, let's say, amphibole cleavage fragments as
 4 a group, like home stake mining, reserve mining, they
 5 do not show excess cancer associated with those types
 6 of exposures.
 7 So, you know, when -- you have to look at the
 8 totality of the evidence. Not one study -- because
 9 you're right, every study has strengths and every study
 10 has weaknesses, but you can't hang your hat on a single
 11 study. You have to look at the totality of the
 12 evidence.
 13 Q The problem is that no study can be large
 14 enough to capture much of an excess incidence of a
 15 disease that only occurs in one per million. You
 16 should be able to go centuries without getting a
 17 mesothelioma -- single mesothelioma in a talc worker,
 18 and if you got one, it would be one of those background
 19 cases, but you should never get two. And you have more
 20 than two. You have -- you have the comp claims, which
 21 you're refusing to produce; you have the two in Honda
 22 study, which you want to discount, and we have
 23 potentially all the people that have been diagnosed
 24 with it after 1989 that the Honda study doesn't cover.
 25 A Well, I don't know what to say to that.

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1 MR. WELCH: Was that a question?
 2 MR. LEVIN: Just an observation.
 3 MR. WELCH: Well, he's not going to
 4 respond to an observation.
 5 MR. LEVIN: I don't expect you to.
 6 THE WITNESS: I'm sorry, I have a
 7 problem with the whole paper, and I've asked
 8 people to review it for me who have more knowledge
 9 in pathology and statistics and mineralogy than I
 10 do, and I've been advised that this is a terrible
 11 paper, terrible in the sense of poor science.
 12 BY MR. LEVIN:
 13 Q Well, are you disputing that the five people
 14 got mesothelioma?
 15 A There's only -- I think that there are
 16 only -- I think that there are pathologists who would
 17 tell you that the -- that the staining techniques in
 18 some of the work that was done, not on all five, but on
 19 some of them was insufficient to make that diagnosis.
 20 On a couple others they might say it was. But I think
 21 that --
 22 Q What would you say to me --
 23 A -- that's an issue that has to be taken up by
 24 people who are more expert on pathology and statistics
 25 in comparison to myself.

32 (Pages 122 to 125)

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1 Q All right. Let me ask you this: You're also
2 tendered as an expert. Let's just assume that the five
3 people, in fact, got mesothelioma, and, in fact, were
4 talc miners. And in fact, that was their only
5 employment. Would you agree with me that that's too
6 many mesotheliomas in talc workers to allow you to
7 continue to conclude that talc exposure doesn't cause
8 mesothelioma?

9 A If I had all those ifs and ands, it would
10 concern me, but we do have all those ifs and ands and
11 we do have other data that -- that, you know, that
12 sometimes people don't have, and if I didn't have the
13 other data, yes, I would be more concerned.

14 Q Would you also be concerned to learn that
15 even in the Honda study, the person who got
16 mesothelioma in 1976 was well within the accepted
17 latency for contracting mesothelioma and had no other
18 exposure to asbestos other than working in the talc
19 mines?

20 A Well, I don't know if that's true or not,
21 that he had no other exposure, and I'm not sure that
22 fifteen years is really a reasonable lower end.

23 Q That's outside your area of expertise, right?

24 A It is, and what I've read, I've heard people
25 argue all over the place on that.

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1 A That I know of?

2 Q Yes. That you have information concerning.

3 A I -- I would only really -- you know, I don't
4 even feel comfortable talking about the two in the
5 mortality studies. I don't even know if that diagnosis
6 was correct.

7 MR. WELCH: And he is not offered as an
8 expert in the diagnosis of mesothelioma.

9 Q Okay. If the -- if the -- if the standard is
10 going to be that anyone who has mesothelioma -- and we
11 don't really know if they really have it. I understand
12 that. But what I'm trying to ask you is something
13 different.

14 If from the beginning of time, how many
15 Vanderbilt former employees or current employees are
16 you aware of that have allegedly contracted
17 mesothelioma? I'm not asking you to confirm their
18 diagnosis, but where somebody believes they had
19 mesothelioma?

20 MR. WELCH: Well --

21 A I don't know. I don't know who believes they
22 do.

23 Q Well, is it more than twenty?

24 MR. WELCH: Oh, come on.

25 A Oh, come on. Oh, heavens no.

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1 Q Okay. Well, if the latency period for
2 contracting mesothelioma is longer than fifteen years,
3 you would agree with me that that's one of the flaws in
4 the Honda study, in that they stopped in 1989, and many
5 of the workers did not have exposure commencing in
6 1948?

7 A Many did not, you know, but interestingly, as
8 I mentioned to you earlier, we do do medical
9 surveillance, and as we sit here, it's over sixty
10 percent of that work population today has more than
11 twenty years of exposure.

12 Q What is the nature of this surveillance?

13 A Well, you know, like most companies, we do
14 chest X-rays of our workers every couple years. We
15 have to do hearing tests every year, part of the law
16 for noise exposure. We do pulmonary function testing.
17 We have the X-rays immediately read at the hospital by
18 a radiologist, and then I also have a pulmonary
19 specialist from the University of North Carolina review
20 them, you know, several weeks later, because he's a
21 specialist in occupational pulmonary medicine.

22 Q Okay. And from the beginning of time up
23 until the present date with your surveillance
24 operation, how many Vanderbilt employees have
25 contracted mesothelioma, that you know of?

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1 Q More than fifty?

2 A Well, if it's not more than twenty it
3 certainly cannot be more than fifty.

4 Q Okay. Is it more than fifteen?

5 A Oh, look, I just -- I'm not in a position to
6 answer that.

7 MR. WELCH: This is outside the scope of
8 what he's being offered for.

9 Q It's actually not, and it's very pertinent to
10 all the answers he's given, so it's actually within the
11 scope of the PMK and with his -- in the scope of the
12 area he's being offered for as an expert and actually
13 within the scope of his testimony.

14 Well, what's the minimum number you feel
15 comfortable saying of Vanderbilt employees who are
16 alleged to have had mesothelioma?

17 MR. WELCH: None.

18 A Well, I -- I don't know how many allege. I
19 mean, I can -- I know about the two in the report. I
20 don't know who in the whole paper worked for Vanderbilt
21 or not. I don't know whether any of them did. Maybe
22 some did --

23 Q But --

24 A -- some didn't. I don't know. There's no
25 work history. I have no way to tell.

33 (Pages 126 to 129)

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1 Q Well, but you know who Vanderbilt employees
2 are, and you know which ones have filed claims and
3 which ones are in your house surveillance, and in which
4 ones in your files are alleged to have gotten
5 mesothelioma and which ones have sued you.

6 A We have seen no evidence in our medical
7 surveillance of mesothelioma.

8 Q Okay. How about in claims made against the
9 company?

10 MR. WELCH: Now, there we go again.
11 We're not getting into Workers' Comp cases.

12 Q Okay. Well, then I think it's fair to assume
13 that there's lots of people who work for Vanderbilt who
14 have got mesothelioma.

15 MR. WELCH: That is not a question. I
16 object to it.

17 MR. LEVIN: I think it's fair to assume
18 that.

19 MR. WELCH: Do what you will, but it is
20 not a proper question.

21 MR. LEVIN: Because I know that most
22 companies, if they had exonerating evidence would
23 produce it. And I think the witness knows the
24 answer and you know the answer.

25 THE WITNESS: Well, I don't think you'd

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1 this, so why don't you guys talk over what you
2 want to do. I'm flexible.

3 MR. WELCH: All right. And you're going
4 to take a little break now?

5 MR. LEVIN: I'm going to take like a
6 five-minute break, because my law partner called a
7 minute ago and told me to call immediately, all
8 right?

9 MR. WELCH: Yes.

10 THE WITNESS: All right.

11 (RECESS TAKEN.)

12 MR. WELCH: We're going to try to get
13 you the additional documentation. It's obvious
14 from the questions you have done so far that there
15 will be more to come. It's now approaching five
16 o'clock on the east coast, and R.S. Vanderbilt has
17 a policy of closing down for security reasons at
18 4:45, and we need to vacate, and the court
19 reporter has plans for 5:00, so I suggest we just
20 stop now. I'll get you the information. I won't
21 promise you I'll give you all of it, but I'll get
22 you a good portion of what you have asked for, and
23 we can continue it at a later time.

24 MR. LEVIN: Okay. Let me just say it's
25 fine for me to continue. It's clear that we might

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1 accept exonerating information. You don't accept
2 the -- the -- those two cases. You're ready to
3 jump on those as though those are associated and
4 they're so shaky it's almost laughable.

5 MR. LEVIN: I didn't jump on the two
6 cases. I jumped on one of the cases because I
7 thought the reason you gave was ridiculous, okay?

8 THE WITNESS: Well, fifteen years --

9 MR. LEVIN: The second --

10 THE WITNESS: -- well, I disagree.

11 MR. LEVIN: The second one where you say
12 that he worked for years around boilers, I
13 thought was, you know -- I didn't critique that
14 one, I critiqued the other one.

15 MR. WELCH: All right. Let's quit
16 debating the testimony.

17 MR. LEVIN: All right. I've got to take
18 a short break here.

19 MR. WELCH: Bill, let me ask you this:
20 How much longer do you think you'll be?

21 MR. LEVIN: It could be many hours. You
22 know, I don't really want to wear you or the
23 witness out, and I think in fairness to everybody,
24 it's clear to me that when you produced this other
25 stuff, there's going to be another installment in

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1 not finish today, even if we had the additional
2 documents, and since we don't have the additional
3 documents, we definitely won't finish today and
4 we'll have to resume anyway.

5 And I have no need to wish to
6 inconvenience everybody to go late today when we
7 have to find another day to do this anyway. I am
8 reserving my right to ask all the questions that I
9 need to ask, both what I would have asked today
10 and new questions arising from the documents. And
11 more important than that, I mean, I do expect that
12 the witness and counsel will take seriously their
13 obligation to look for all the things that we've
14 discussed today that is in the possession of
15 Vanderbilt and defendant counsel, for him to look
16 at it and presumably forward it to me without
17 extracting anything, or at least identifying for
18 me the issues he may have with particular
19 documents in terms of production, and resume after
20 I've had those documents in my possession to
21 review, and we can then conclude the deposition
22 based on all the questions I have and will have
23 based on reading those documents.

24 MR. WELCH: All right.

25 MR. LEVIN: So does anybody want to take

3/30/2006

John Kelse

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

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

8 MR. LEVIN: Okay.

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

11 MR. LEVIN: Okay.

12 (THE DEPOSITION WAS ADJOURNED AT 5:05 P.M.)
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24
25

1 Brandon Smith Reporting Services
2 44 Capitol Avenue
3 Hartford, Connecticut 06106
4 (860) 549-1850
5
6

7 April 5, 2006

8 In re: LOLKE LLOYD HAANSTRA v. ASBESTOS
CORPORATION LIMITED, ET AL

9 Deposition of: JOHN KELSE
10 Date: MARCH 30, 2006

11 The following items checked pertain to the above
captioned case:

12 X ORIGINAL TRANSCRIPT enclosed in protective,
sealed white envelope.

13 EXHIBITS attached to ORIGINAL TRANSCRIPT.

14 X READING/SIGNING WAIVED NOT WAIVED
15
16

17 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
18 envelope and properly retain for the Court.
19

20 Signed

Janet A. Orfitelli

Brandon Smith Reporting

21 Date sealed
22
23
24
25

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1 STATE OF CONNECTICUT
2

3 I, JANET A. ORFITELLI, a Licensed Shorthand
Reporter/Commissioner within and for the State of
4 Connecticut, do hereby certify that I took the
deposition of JOHN KELSE on MARCH 30, 2006, at the
5 offices of R.T. VANDERBILT, CO., INC., 30 WINFIELD
STREET, NORWALK, CONNECTICUT.
6

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

11 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
12 TRANSCRIPTION; and I further certify that said
deposition is a true record of the testimony given by
13 said witness.

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

17 WITNESS my hand and affixed my seal this 5th day
18 of April, 2006.
19
20

21 Janet Orfitelli, LSR
22 Commissioner

23 My commission expires
24 July 31, 2007
25

35 (Pages 134 to 136)

Brandon Smith Reporting Service, LLC

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