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12 SUPERIOR COURT OF CALIFORNIA (UNLIMITED JURISDICTION)

13 COUNTY OF ALAMEDA

14 BARBARA GILLETT, et al.,

15 Plaintiffs,

16 vs.

17 METROPOLITAN LIFE INSURANCE
18 COMPANY,

19 Defendants.

20 MARY RAMIREZ,

21 Plaintiff,

22 vs.

23 METROPOLITAN LIFE INSURANCE
24 COMPANY,

25 Defendants.

Case No. C-768722 (Lead Case)

**OMNIBUS DECLARATION OF BARRY I.
CASTLEMAN IN OPPOSITION TO
DEFENDANT METROPOLITAN LIFE
INSURANCE COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Case No. 841663-8

1 3. My book, Asbestos: Medical and Legal Aspects, now in its fifth edition, is a treatise
2 on the public health history of the asbestos industry and the development of knowledge about
3 asbestos and its hazards. The book is the result of many years of research into the history of the use
4 of asbestos, the use of asbestos products in various industries, the early manufacturers and suppliers
5 of asbestos and asbestos-containing products, and the effects asbestos has on humans. My book
6 references thousands of articles, books, congressional hearings, industrial and scientific material, and
7 corporate documents which I have read and analyzed. It is cited as ("Exhibit 1, Castleman, p. ____"),
8 hereafter.

9 4. In addition to relying upon my research and investigation into corporate documents
10 and other sources described above, I have reviewed sworn testimony given by Dr. David Egilman in
11 trial against Metropolitan Life Insurance Company ("Met Life") conducted in 2001 in cases entitled
12 Aaron, et al. v. Abex Corporation, No. 94-C-2110-2 and Bright, et al. v. Owens Corning, et al., No.
13 11414 BH00, in the District Court, 23rd Judicial District, Brazoria County, Texas. Dr. Egilman is a
14 medical doctor with a medical degree from Brown University in 1978, and a Master's degree in
15 public health from Harvard School of Public Health in 1982. He completed three medical
16 residencies, in internal medicine, occupational medicine, and preventative medicine. He practiced
17 medicine and taught at Brown University in Providence, Rhode Island. He also worked with the
18 National Institute of Health and was assigned to Public Health School to learn occupational medicine
19 and regulation of worker health, among other things. He became a medical officer with the National
20 Institute for Occupational Safety and Health.

21 **I. MET LIFE'S EARLY KNOWLEDGE OF THE HAZARDS OF ASBESTOS**

22 5. By the early 1920s, Met Life had knowledge that asbestos exposure by humans could
23 lead to fatal asbestos-related diseases. Met Life knew in 1921 that asbestos workers were in a
24 hazardous occupation because of exposure to harmful inorganic dusts like asbestos dust. (Exhibit 2,
25 "Occupational Hazards and Diagnostic Signs, a Guide for Medical Examiners," Metropolitan Life
26 Insurance Company, 1921.) (Copies of exhibits referred to are submitted as "Plaintiffs' Omnibus
27 Exhibits to the Declaration of Barry Castleman in Opposition to Defendant Metropolitan Life
28 Insurance Company's Motion for Summary Judgment.") This Met Life publication in 1921

1 described asbestos work as a hazardous occupation because of exposure to harmful inorganic dust.
2 The publication listed cough, dyspnea, clubbed fingers, rales, and fibrosis as symptoms to look for in
3 persons exposed to inorganic dusts, such as asbestos workers. Many of the symptoms listed are the
4 same symptoms found in persons suffering from asbestosis. Met Life was also aware of high claim
5 rates for lung disorders made at one of its group policyholders. An actuary noted in 1935 that claims
6 were exceeding premiums at Johnson's Co., a company engaged in asbestos quarrying and
7 manufacture. "An analysis of the claims shows a preponderance of lung disorders. The company is
8 engaged in the quarrying and manufacturing of asbestos, and we feel there is a decided occupational
9 hazard here." (Exhibit 3, Memo May 27, 1935, G.W. Fitzhugh to Dr. McConnell.) Met Life raised
10 the premiums for asbestos miners by 40 percent for accident and health coverage, compared with
11 non-hazardous industries, in order to make insuring asbestos workers a profitable business. (Exhibit
12 4, Memo August 22, 1939, D.C. Buell to Dr. McConnell.)

13 II. THE EARLY MET LIFE SPONSORED RESEARCH – KEPT UNDER WRAPS

14 A. The Canadian Studies

15 6. In 1926, Met Life determined to provide funding to establish an industrial hygiene
16 department at McGill University in Canada. Met Life went into this program on the basis that there
17 would be "a definite, tangible, quid pro quo." (Exhibit 5, Memo January 19, 1926, Dr. Wright to Dr.
18 Knight; Exhibit 6, letter January 7, 1926, medical director to Dr. Charles F. Martin; Exhibit 7, letter
19 January 19, 1926, C.F. Martin to Augustus Knight.)

20 7. The new McGill group produced a study of examinations of asbestos mine workers in
21 Asbestos and Thetford Mines, Quebec, dated November 1930. The study involved 141 employees of
22 Canadian Johns-Manville. Of 195 workers, 42 had asbestosis. Frank G. Pedley, M.D., "Report of
23 the Physical Examinations and X-Ray Examinations of Asbestos Workers in Asbestos and Thetford
24 Mines, Quebec," 1930. (Exhibit 8.) Dr. Pedley had noted that the study was "being carried on with
25 the cooperation of the Metropolitan Life Insurance Co., and it is expected that valuable information
26 on the subject of asbestosis will be forthcoming." He also "hoped that permission to publish the
27 results will be obtained." Pedley, "Report of the Activities of the Industrial Clinic, Montreal General
28 Hospital, for the year September 1, 1929 to August 31, 1930," pp. 2-3, (Exhibit 9.) Dr. Pedley

1 pointedly reiterated to Met Life that "an interesting state of affairs was disclosed, which was reported
2 to Dr. A.J. Lanza of the Metropolitan Life Insurance Company, but to date permission has not been
3 secured to publish the results of the study." (Exhibit 10, letter October 11, 1932, Dr. Pedley to N.L.
4 Burnette of Met Life, p. 2.) Pedley never did publish his 1930 findings. (Exhibit 1, Castleman, p.
5 19.)

6 8. Met Life prepared its own report of the Canadian studies, which included dust study
7 information as well, entitled "Effects of the Inhalation of Asbestos Dust Upon the Lungs of Asbestos
8 Workers, Canadian Study." (Exhibit 11.) Met Life sent a copy to attorney Allan Wardwell on July 9,
9 1931, with the caveat that the report would "be given no publicity by us except with the consent of
10 the firms concerned." (Exhibit 12.) Many of the dust counts were well under what became the
11 Threshold Limit Value ("TLV") of 5 million particles per cubic foot ("5 MPPCF"). This report was
12 never published.

13 B. The United States Studies

14 1929-1931 Five Plant Study

15 9. According to Met Life, in 1929 Met Life was approached by firms representing the
16 asbestos industry in the United States with the request that a hygiene study be made of that industry.
17 Met Life studied five plants, of which one was a J-M plant. Met Life conducted asbestos "dust
18 counts" and did x-ray examinations of 126 workers, "selected more or less at random from among
19 those having more than three years employment in the industry." "Effects of the Inhalation of
20 Asbestos Dust Upon the Lungs of Asbestos Workers," p. 12 (Exhibit 13.) Films "were read
21 conservatively," and "only those were classed as positive about which there was no major
22 disagreement" (pp. 12-13). Of the 126 workers, 67 were diagnosed with asbestosis and 39 were
23 "doubtful." Most with "doubtful" or "negative" readings complained of shortness of breath and
24 cough (p. 14). (Exhibit 1, Castleman, p. 147.) The report reflected nine cases of asbestosis in
25 spinning, yet three of the four plants with measurements in spinning areas had dust counts below 5
26 MPPCF (Table 1 and p.15, Table 5). Lanza sent this report to Mr. Wardwell, noting that it was
27 confidential and "will be given no publicity by us except with the consent of the firms concerned."
28 (Exhibit 14, letter March 20, 1931, Lanza to Wardwell.)

1 10. The first of the dust surveys for the asbestos industry was done at the Manville, New
2 Jersey plant of Johns-Manville in 1929. Met Life found that dust exposures at Manville were,
3 overall, far below the 10 Million Particles per Cubic Foot (MPPCF) of air, the concentration of
4 respirable particles then regarded as the permissible limit for silica dust, a recognized lung scarring
5 hazard. The highest dust count for the textile operations was 2.5 MPPCF, with two thirds of the dust
6 counts (14/21) below 1 MPPCF. "Effects of the Inhalation of Asbestos Dust Upon the Lungs of
7 Asbestos Workers," p. 12 (Exhibit 13.)

8 11. The 1931 Met Life report on U.S. plant studies concluded that prolonged exposure to
9 asbestos dust causes a pulmonary fibrosis, of a definite type distinct from silicosis, demonstrable on
10 x-ray films.

11 Conclusion No. 6 was:

12 It is not practicable as yet to establish standards for the dust content of air
13 and in view of the many low dust counts in this report, compared with the
14 U.S. Public Health Service standard for silica dust, it is possible that
15 asbestos may cause pneumoconiosis more readily than free silica (SiO₂).
16 (Emphasis supplied.)

17 12. In an unpublished address entitled "Comments on Asbestos" to proceedings of the
18 November 1933 meeting of The Home Office Underwriters Association, Lanza commented on this
19 study, and remarked:

20 We made a great many dust counts in these mills and, in the main, the
21 amount of dust in the air did not seem excessive as judged by the standards
22 or what we had been accustomed to find in making dust counts for silica
23 dust. (p. 298). (Exhibit 15.) (Emphasis supplied.)

24 13. The foregoing observations are significant because they show (a) considerable
25 asbestos-related disease – over 50% of the workers affected – with (b) relatively low dust counts as
26 compared with silica counts and standards. Met Life apparently recognized that whatever the "safe"
27 level for asbestos would be, it should be lower than that for silica.

28 14. Silicosis was caused by silica dust which produced a progressive fibrosis which itself
could cause disability and death. Studies were "in agreement in showing extraordinarily high
mortality rates from tuberculosis for industries and occupations in which large numbers of men are

1 known to be exposed to a real silica hazard.” A.J. Lanza and R.J. Vane, “Industrial Dusts and the
2 Mortality from Pulmonary Disease” (1939) (Exhibit 16, p. 423). In this text, Lanza wrote that one of
3 the “confusing” aspects of asbestosis was that none of the cases published were in asbestos miners.
4 The McGill findings of asbestosis in the Canadian mines had been suppressed.

5 15. Lanza commented on the medico-legal aspects of silicosis and asbestosis in the first
6 years of the Great Depression:

7
8 Silicosis and asbestosis burst upon the amazed consciousness of American
9 industry during the period 1929-1930... Arising out of the period of
10 economic depression, the situation with respect to silicosis and asbestosis
11 became manifest as a medico-legal phenomenon of a scope and intensity
that was at once preposterous and almost unbelievable. Damage suits,
under the common law, were instituted against employers by employees,
alleging pulmonary dust diseases, in industrial centers all over the United
States, to an amount in excess of 100 million dollars.

12 (Exhibit 17, Lanza, A.J. (ed) Silicosis and Asbestosis, London and New York, Oxford
13 Univ. Press, 1938, pp. 405-406, reprinted in Exhibit 1, Castleman, p. 144.)

14 16. Silicosis was viewed by at least one industry lawyer as “our greatest industrial hazard
15 which, if not properly controlled, will result in the financial ruin of many companies.” The problem
16 was “this flood of pneumoconiosis cases,” regarded as a “racket” generated by “shyster lawyers” and
17 “their twin brothers in iniquity, the quack doctors.” “The Problem” by Alfred P. Hirth, pp. 8-9
18 (1935) (Exhibit 18). (Speech given at meeting of forming the Industrial Hygiene Foundation.)

19 1932 J-M Study, Manville, New Jersey.

20 17. The following describes the 1932 Manville plant study entitled “Physical
21 Examinations at Manville Factory, Manville New Jersey” (Exhibit 19), as set forth in Exhibit 1,
22 Castleman, pp. 21-22:

23
24 In 1932, medical examinations were conducted for all 1,140 employees of
25 Johns-Manville’s factory in Manville, New Jersey. Guidance was obtained
26 from Metropolitan Life doctors Lanza and Fellows in designing the survey.
27 Interpretation of chest x-rays was done by Dr. F.V. Meriwether, chief of
28 the U.S. Bureau of Mines clinic in Picher, Oklahoma; however, Dr.
Meriwether was not provided with information on the occupational
exposure histories of the workers after their hire by Johns-Manville. The
report of this unpublished study shows 327 (29%) of the workers had x-ray
evidence of pneumoconiosis, which was called “asbestosis” if the workers
had had no prior history of exposure to occupational dust hazards. The

1 company separately tabulated length of service and length of exposure,
2 while noting asbestosis among a number of workers listed as having no
3 exposure. Some of the employees diagnosed by x-ray as having asbestosis,
4 whose "exposure" at Manville was recorded as "none" were a watchman, a
5 mill-wright, packing and shipping department workers, and machinists.
6 Thus, Manville plant workers exposed as "bystanders" were identified as
7 asbestosis victims before any such cases were reported in the published
8 medical literature.

9 18. The 1932 Manville study provided further evidence that asbestos disease could and
10 did result from exposures which were low. It was noted that 16 percent of the asbestosis cases were
11 in the textile department, the building where Met Life's 1929 report had found exposures to
12 respirable dust to be 2.5 MPPCF and below.

13 III. TLV HISTORY

14 A. The 1935 Met Life Report "Effects Of the Inhalation of Asbestos Dust On the Lungs of 15 Asbestos Workers" and Its Sequelae

16 19. At meetings held at J-M's offices on November 28, 1933, and January 4, 1934, it was
17 proposed and agreed among J-M and Raybestos-Manhattan executives and Met Life that Met Life
18 would complete its investigation and survey instituted in 1929. (Exhibit 20; Memo November 28,
19 1933; Exhibit 21, Memo January 4, 1934). The correspondence trail shows what happened next.

20 20. Vandiver Brown, corporate attorney at J-M, wrote Lanza on December 10, 1934, and
21 commented upon galley proofs of the upcoming report. Brown wanted included a sentence which
22 had appeared in the 1931 (unpublished) report to the effect, referring to asbestosis, that clinically "it
23 appeared to be of a type milder than silicosis." (Exhibit 22.)

24 21. Brown sent the galley proofs to George Hobart, a Newark attorney. Hobart wrote a
25 letter of December 15, 1934, taking issue with several statements. (Exhibit 23.) J-M got them
26 changed. One reference was that Plant E "was unnecessarily dusty." The comment appears in the
27 1931 report (Exhibit 13, p. 11, ¶¶10-11, above), and does not appear in the final published report
28 (Exhibit 24, p. 6).

Hobart concurred with Brown that the conclusions should reflect that clinically, asbestosis
was, or appeared to be, milder than silicosis. Hobart wanted this included to show there was a
substantial difference between silicosis and asbestosis, since J-M was opposing inclusion of
asbestosis as a compensable disease before the New Jersey legislature and defending lawsuits brought

1 on negligence theories. This conclusion was not included in the galley proofs, the correspondence makes
2 clear. It reappeared in the final, published report.

3 Hobart also did not like the possibility that a pneumoconiosis could arise more readily from
4 asbestos than from granite dust, i.e., silica dust. He therefore stated that "we should, if possible,
5 eliminate all that part of conclusion No. 6 following the semicolon after the words "of air...."
6 (Exhibit 23, Letter, December 15, 1934, Hobart to Brown.)

7 22. Brown, under date of December 21, 1934 (Exhibit 25), sent Hobart's letter to Lanza.
8 He stated that no one was suggesting that Lanza alter "by one jot or tittle any scientific facts or
9 inevitable conclusions." But he asked "that all of the favorable aspects of the survey be included and
10 that none of the unfavorable be unintentionally pictured in darker tones than the circumstances
11 justify." Brown closed with the sentiment that he felt "confident we can depend upon you and Dr.
12 McConnell to give us this 'break'...."

13 23. Met Life did make the change to conclusion No. 1 that asbestosis was "milder than
14 silicosis" and deleted the offending passage from conclusion No. 6, to remove the point that asbestos
15 may cause disease more readily than silica. The latter conclusion was made in both the unpublished
16 1931 report and in the galley proofs of Lanza's article. The final Met Life article, published on
17 January 4, 1935, by the U.S. Treasury Department, Public Health Reports, omitted that conclusion.
18 (Exhibit 24.)

19 24. The companies with asbestos and silica hazards wished to promote a TLV to help
20 them defend lawsuits. (Exhibit 26, letter January 22, 1935, V. Brown to M.F. Judd with
21 Memorandum; Exhibit 27, letter March 22, 1935, L.R. Thompson of Owens-Illinois to L.R.
22 Thompson, USPHS, see enclosure 5, p.1 (plan at outset of Industrial Hygiene Foundation to set up
23 authoritative and approved standards for control of dusts which if complied with "will act as a
24 defense against personal injury suits".) The TLVs also were misconstrued as a guarantee of safety by
25 some of the people whom they were intended to serve (Exhibit 28, Castleman and Ziem, "American
26 Conference of Governmental Industrial Hygienists: Low Threshold of Credibility," 26 American
27 Journal of Industrial Medicine 133, 142-143). This is because they came to be widely represented
28 and accepted as scientifically-based limits that would protect virtually all workers from health

1 impairment over a lifetime of exposure on the job. (Exhibit 29, Castleman and Ziem, "Corporate
2 Influence on Threshold Limit Values," p. 25). Met Life knew from the 1930-1932 studies that a TLV
3 of 5 MPPCF was not safe for asbestos-containing dust, and that if there was a safe level it was below
4 that concentration. (Exhibit 30; Aaron Tr., 2-05-01, pp. 53-81.) But the 1930-1932 studies were
5 concealed, and Met Life changed the critical conclusion suggesting that the TLV be lower for
6 asbestos than for silica dust.

7 25. The Air Hygiene Foundation's medical committee, chaired by Lanza, suggested a
8 TLV of 5 MPPCF for silica dust, although they separately doubted the adequacy of scientific
9 knowledge for setting a threshold to prevent silicosis. J-M then succeeded in holding the limit at 5
10 MPPCF value for asbestos dust based on the assertion (supported by Lanza's J-M-induced changes
11 to the 1935 report) that asbestosis was a less serious disease than silicosis. (Exhibit 31, Markowitz
12 and Rosner, "Public Health Then and Now, The Limits of Thresholds: Silicon and the Politics of
13 Science, 1935 to 1990," Vol. 85, No. 2, p.255). J-M's Vandiver Brown suggested that the 5 MPPCF
14 asbestos dust limit was selected with it well in mind that this was the level prescribed for silicosis.
15 (Exhibit 1, Castleman, p. 235). U.S. Public Health Service surveys of three North Carolina asbestos
16 textile mills by Dreessen, Miller, et al., which formed the principal basis for the TLV, were hampered
17 because the mills had fired 150 workers, out of less than 600, suspected of having asbestosis. Of the
18 fired employees that were located, 43 of 69 had asbestosis, but no attempt was made to assess their
19 exposures at the plants. (Exhibit 1, Castleman, p. 236.) The Dreessen report concluded that 5
20 MPPCF may be regarded "tentatively" as the TLV until better data are available. (Exhibit 1,
21 Castleman, p. 238.) While industry and government hygienists endeavored to set a TLV, neither J-M
22 nor Met Life revealed the findings from the 1930-32 plant and mine worker studies and information,
23 deleted from the 1935 published report. In one medical book, "Industrial Medicine" by Clark and
24 Drinker, the authors stated that on the basis of abundant experience McConnell of Met Life preferred
25 to see the dust count below 5 million and welcomed still lower figures. This was referenced to a
26 personal communication (Exhibit 32.) The book does not suggest that McConnell shared with the
27 authors the basis for his preference, or the data withheld from the 1935 Met Life report on this issue,

28

1 and the reference stands as further confirmation that Met Life knew the 5 MPPCF standard was
2 unsafe.

3 26. The book "Silicosis and Asbestosis" (1938) edited by Lanza, referred to the study
4 commenced in 1929 and published in 1935. The book repeated the conclusion that asbestosis,
5 clinically, appears to be milder than silicosis (Exhibit 17, p. 59). It did not disclose that this
6 conclusion was inserted at the behest of J-M, nor did it disclose that the original conclusion, that the
7 safe level was likely less for asbestos than silica dust, had been deleted at J-M's behest, although it
8 referred to the 5 MPPCF as a threshold limit suggested by Dreessen, Miller, et al. (Exhibit 17, p. 59).

9 27. Met Life knew, from its studies in 1929-1932, that the safe level for asbestos should
10 be set below 5 MPPCF. (Exhibit 30, Aaron Tr., 2-05-01, pp. 54-57.) Nonetheless, Lanza wrote to
11 Manfred Bowditch, Director, Division of Industrial Hygiene, Massachusetts, on December 13, 1937,
12 and agreed that 5 million particles was "a pretty fair threshold for the asbestos industry." (Exhibit
13 33.)

14 **B. The 1947 Hemeon Report**

15 28. The Industrial Hygiene Foundation ("IHF") was formally founded in 1936, as Air
16 Hygiene Foundation. (Exhibit 1, Castleman, p. 681.) Industry people met at the Mellon Institute,
17 including Alfred Hirth ("The Problem" speech), Lanza, and Vandiver Brown, on January 15, 1935.
18 Problems identified, according to Brown, were "the menace of ambulance chasing lawyers in
19 combination with unscrupulous doctors," and desirability of covering dust diseases under workers
20 compensation, to eliminate juries and "the shyster lawyer and the quack doctor." ("Memorandum
21 Re: Mellon Institute of Industrial Research Symposium on Dust Problems – Pittsburgh, Jan. 15,
22 1935" dated January 18, 1935, by Vandiver Brown (Exhibit 26.) Mr. Brown characterized the Air
23 Hygiene Foundation as "the creature of industry" and "the one institution upon which employers can
24 rely completely for a sympathetic appreciation of their viewpoint." (Exhibit 34, letter December 4,
25 1936, V. Brown to C.J. Stover.)

26 29. Lanza was on the IHF board of trustees and chairman of its medical committee from
27 the 1930s to the 1950s.

28

1 30. In 1947, W.C.L. Hemeon, head engineer of the IHF, conducted an industrial hygiene
2 investigation for the Asbestos Textile Institute. He studied dust levels and disease in ten plants,
3 including J-M. (Exhibit 35.) Hemeon's observations on the inadequacy of the 5 MPPCF TLV
4 standard are excerpted in my book, Exhibit 1, at p. 254:

5 The maximum permissible dustiness for asbestos is commonly taken to be
6 five million particles per cubic foot. This represents good attainment in the
7 dust control program. It is emphasized, however, that dust elimination to
8 this extent does not positively insure that no asbestosis will develop in
9 some workers after a long working life (greater than 20-25 years).
10 Scientific evidence is obscure on this point. It is recommended, therefore,
11 that studies be initiated aimed to develop another yardstick, because it is
12 suggested that when control below five million is attained, present dust
13 count methods may not properly measure the remaining hazard.

14 This point is repeated throughout the text. Some examples:

15 ...dust count investigations cannot, in the present state of knowledge, give
16 us assurance as to the extent of our success in eliminating the hazard.

17 ...in the U.S. Public Health Service study, there were abnormally few who
18 had been exposed for more than 15 years and practically none over 20
19 years. These facts seriously affected the conclusions that could be drawn.

20 The information available does not permit assurance that five million is
21 thoroughly safe nor has information been developed permitting a better
22 estimate of safe dustiness.

23 This report remained confidential, and the companies studied received a copy as well as a
24 short supplemental report specific to their plants included in the study (Exhibit 30, Aaron Tr., 2-05-
25 01, pp. 86-88).

26 The Saranac Studies on Asbestos and Cancer

27 31. Lanza was of the view that he and Royd Sayers (U.S. Public Health Service) "were
28 instrumental in establishing Saranac Laboratory in the industrial consultation field." (Exhibit 36;
memo October 18, 1935, Lanza to Dr. Armstrong.) Met provided key funding to Saranac during the
years 1929-1933, before industrial contract work came in to fully support the laboratory in upstate
New York.

 32. In 1936, ten asbestos companies agreed to underwrite experiments with asbestos dust
to be conducted by Dr. Leroy Gardner, Director of the Saranac Laboratory. (Exhibit 37,
"Memorandum of Agreement," November 20, 1936.) Vandiver Brown of J-M, on behalf of the

1 group, wrote Gardner authorizing the research. His letter confirmed that results obtained would be
2 considered the property of those advancing the funds, "who will determine whether, to what extent
3 and in what manner they shall be made public." (Exhibit 38; letter November 20, 1936, V. Brown to
4 L. Gardner.) Gardner wrote back, agreeing the results shall become the property of the contributors
5 and manuscripts will be submitted for their approval before publication. (Exhibit 39; letter
6 November 30, 1936, Gardner to Brown.)

7 33. On February 24, 1943, Saranac's Gardner sent to Brown an outline of a proposed
8 monograph. He noted that "the question of cancer susceptibility now seems more significant than I
9 had previously imagined." (Exhibit 40, letter, February 24, 1943, Gardner to Brown.) The
10 monograph outline noted there were ten cases of lung cancer in asbestos workers in the published
11 literature, and concluded that the human data were suggestive but not conclusive that asbestos caused
12 lung cancer. Of particular significance, Gardner described a Saranac study wherein of 11 mice
13 inhaling long fiber asbestos, 81.8% developed tumors in their lungs, compared with an 18.8% rate in
14 mice exposed for comparable periods to other dusts. Gardner concluded "the incidence rate 81.8% is
15 excessive." (Exhibit 40, letter, February 24, 1943, Gardner to Brown, p. 8) He wrote that these
16 observations were "suggestive but not conclusive evidence of a cancer stimulating action by asbestos
17 dust."

18 Gardner also noted that the tentative standard of 4-5 MPPCF "is probably unreliable" because
19 the measurement methodology used did not collect "most of the fibers that are the source of the
20 hazard." (Exhibit 40, letter, February 24, 1943, Gardner to Brown, p. 10)

21 34. Gatke Corporation, one of the sponsors, began pushing for publication of a Saranac
22 report because it indicated that damage was caused by longer fibers, which could be arrested through
23 use of respirators. (Exhibit 41; letter August 12, 1946, T. Gatke to J.F.D. Rohrback of Raybestos-
24 Manhattan.) Gatke envisioned such a report "without injections of possibilities of cancer, etc., etc.,"
25 with which the companies could combat compensation claims.

26 35. J-M as well was pushing for publication, because there was a "real ferment underway
27 in Quebec on the whole subject of industrial health," with people taking positions that might get the
28

1 mining industry, and J-M in particular, "into real difficulties." (Exhibit 42, letter June 1, 1948, J.P.
2 Woodard to A.J. Vorwald, bcc: Lanza.)

3 36. Gardner died in October 1946. By the year's end, Lanza was made a member of the
4 Board of Trustees of the Trudeau Foundation, parent of the Saranac Laboratory. (Exhibit 1,
5 Castleman, p. 53.) Saranac sent Gardner's notes to Lanza for suggestions. Lanza wrote Kenneth
6 Lynch, of the Medical College of the State of South Carolina, seeking his assistance. (Exhibit 43,
7 letter December 6, 1946, Lanza to Lynch.) Lynch agreed to look at the material. (Exhibit 44, letter
8 December 9, 1946, Lynch to Lanza.)

9 37. A meeting of J-M executives and Lanza took place on January 21, 1947, to hear
10 Lanza's report on Saranac. Lanza reported on his dealings with Dr. Lynch to see if Gardner's work
11 could be put together in publishable form. J-M was of the view that the company had a definite job
12 to do in Canada to counter the effects of a lot of propagandizing done in relation to asbestos dust, and
13 a report could be of material help. (Within a month, a major strike would start at J-M's mine and
14 close down most of the asbestos mines in Canada for five months.) Brown reminded the group that
15 no publication could take place without the companies' consent, and he hoped Lynch would not
16 include objectionable material; for example, anything about the relationship between asbestos dust
17 and cancer. Lanza assured him that any report prepared by Lynch first would be submitted to J-M
18 before being published. (Exhibit 45, Minutes of Meeting Held January 21, 1947, by J.R. Hamilton.)

19 38. On March 18, 1947, Manfred Bowditch of Saranac wrote to Brown in response to his
20 March 12 letter, and listed points in Gardner's notes which had been transcribed and sent to Lynch.
21 Among them was paragraph 4, that 81.8% of the mice inhaling long fiber asbestos developed lung
22 cancer. (Exhibits 46, 47.) Brown replied under date of March 21, 1947, exclaiming that he was
23 "very much concerned by paragraph numbered 4," as to which, in a blind cc to J-M executive Vice
24 President J.P. Woodard, the usually carefully spoken Brown wrote, "The finding referred to looks
25 like dynamite." (Exhibit 48.)

26 39. Lynch decided that the partially completed manuscript could be and should be
27 published just as Gardner had written it, with an explanation of his sudden demise. (Exhibit 49, letter
28 June 30, 1947, Lynch to Lanza.) Lynch sent the manuscripts back to Lanza, arranged, joined, and

1 titled as a single publication. (Exhibit 50, letter July 23, 1947, Lynch to Lanza.) Dr. Lynch adhered
2 to the view, which he expressed to Lanza, that Gardner's material was publishable as it stood, and
3 revisions by others might not truly represent him. (Exhibit 51, letter August 7, 1947, Lynch to
4 Lanza). Dr. Herbert Abrams, Chief of the Bureau of Adult Health at the time this occurred, later
5 wrote: "How many lives would have been saved if Gardner's observations including those on lung
6 cancer and asbestos had been reported without censorship?" (Exhibit 52, "Some Hidden History of
7 Occupational Medicine," p. 27.)

8 40. Saranac prepared a report dated September 30, 1948. It reflected, in paragraph 75, the
9 "striking feature" that 9 of 11 mice got tumors, and in paragraph 92, that Gardner's notes "called
10 attention to the high incidence of lung cancer among mice inhaling long-fiber asbestos." (Exhibit
11 53.)

12 41. The companies called a meeting at Johns-Manville's Boardroom for November 11,
13 1948. (Exhibit 54, letter October 27, 1948, V. Brown to companies.) The meeting resulted in the
14 unanimous opinion that the references to cancer and tumors should be deleted, as a point they would
15 insist upon. All copies of the draft report were to be returned. (Exhibit 55, letter November 12,
16 1948, V. Brown to American BrakeBlok.) Dr. Lanza agreed to take up with Saranac the matter of
17 revising the report and putting it in the shape they had agreed upon. (Exhibit 56, letter November 30,
18 1948, J.P. Woodard to T. Gatke.)

19 42. In a December 14, 1948 letter to Arthur Vorwald, Saranac Director, Lanza instructed
20 "that all references to cancer or tumors should be omitted," as well as any related tables. (Exhibit 57,
21 letter December 14, 1948, Lanza to Vorwald.) And they were. Dr. Vorwald's marked up copy
22 shows the offending sections stricken out (Exhibit 58, Revised Report). A revised report was
23 urgently needed in Canada, (Exhibit 59, letter December 16, 1948, Lanza to Vorwald), and was
24 available by March 3, 1949. (Exhibit 60, letter March 3, 1949, V. Brown to American BrakeBlok
25 and others).

26 43. Dr. Harriet Hardy, a famous pioneering doctor in the industrial medicine field, met
27 with Gardner at Saranac in the summer of 1946. Much later, she and Dr. Egilman published
28 information that Gardner's animal experiments indicated that asbestos caused cancer. Gardner told

1 Hardy that the research sponsors would not permit him to publish that information. (Exhibit 61,
2 Aaron Tr., 2-13-01, pp. 174-175; Exhibit 62, "Corruption of Occupational Medical Literature: The
3 Asbestos Example.")

4 44. The final version of the Saranac study was published in 1951 in the A.M.A. Archives
5 of Industrial Hygiene and Occupational Medicine, authored by A.J. Vorwald, T.M. Durkan and R.C.
6 Pratt, with no references to cancer. (Exhibit 63.) The Saranac study as published stated that it
7 presented for the first time a complete survey of the entire experimental investigation done by Dr.
8 Gardner. This was not true. The published paper left out the information about cancer, and it left out
9 Gardner's remarks that the TLV was unreliable because it was based on flawed sampling
10 methodology.

11 45. The published Saranac report received wide circulation. (Exhibit 64, letter June 11,
12 1951, Smith to McGraw.) It won the Industrial Medical Association's Merit in Authorship Award,
13 and implied by omission that experimental animal studies failed to provide evidence that asbestos
14 was carcinogenic to humans.

15 46. As this paper went to press, Vorwald was contracted to do another experimental
16 asbestos inhalation study on mice by the Quebec Asbestos Mining Association (QAMA). This work
17 was agreed to in November 1950, at a meeting attended by a Johns-Manville executive, Dr Lanza,
18 Dr. Vorwald, and the QAMA lawyer (Exhibit 1, Castleman, p. 67). The study started in March of
19 1951. The QAMA study was strongly positive, but the 5.7 relative risk of the asbestos-exposed mice
20 was not publicly disclosed until 1995 by Vorwald's successor at Saranac (Exhibit 1, Castleman, p.
21 68-69).

22 47. The TLVs, including the TLV for asbestos, were first adopted by the American
23 Conference of Governmental Industrial Hygienists ("ACGIH") in 1946. They were promoted as and
24 were understood by many as stating a safe level of exposure. The deletion of information about
25 cancer from the published Saranac report is especially important, in that if a substance causes cancer
26 there is no safe level of exposure. But, if TLVs for carcinogens were to be set at zero, or if they were
27 to be dramatically lowered as recommended by U.S. authors for carcinogens including asbestos in the
28 1950s, sales of asbestos-containing products could drop drastically, which is eventually what

1 happened. (Exhibit 30, Aaron Tr., 2-05-01, pp. 89, 102-105). I have researched and written on the
2 subject of the TLVs, and am knowledgeable about them. Worker health standards in industry,
3 enforced by the government, had been inevitable since the New Deal era. State government agencies
4 in California and other states were starting to codify limits on worker exposure to airborne dusts and
5 gases in the 1930s, initially listed as advisory standards. U.S. consumption of asbestos dropped
6 dramatically from its peak after 1973, following increased public and media awareness about
7 asbestos, and government regulation by new federal authorities involving constant downward
8 pressure on permissible exposure limits. (Exhibit 1, Castleman, pp. 730-731.)

9 48. Lanza retired from Met Life at the end of 1948. He took a position at New York
10 University, which Met Life funded, and Met life paid his expenses in the early 1950s. (Exhibit 61,
11 Aaron Tr. 2-13-01, pp. 120-121.)

12 49. At the First National Cancer Conference, in 1949, there was a panel discussion on
13 asbestos and cancer. The published account read, "The clinical work of Lanza and the experimental
14 work of Vorwald have not revealed any carcinogenic properties which can be attributed to asbestos."
15 Evidently, these doctors did not present Saranac's 81.8 percent lung cancer rate in mice and allow the
16 participants at the conference to draw their own conclusions on how significantly this exceeded
17 Gardner's comparison-dusts-group rate of 18.8 percent. (Exhibit 1, Castleman, p. 88)

18 50. Lanza was a member of the Cancer Prevention Committee of New York and spoke at
19 the group's meeting in 1950, where cancer in asbestos workers was discussed. In the published
20 discussion, Lanza took issue with the U.K. report that 13 percent of 235 workers dying with
21 asbestosis also had cancers of the lung and pleura. He said these lungs were "searched with a
22 microscope" and suggested that there might be a lot of these tumors found "in any population"
23 subjected to "the same minute scrutiny." (Exhibit 1, Castleman, pp. 70-71) Lanza's unique viewpoint
24 on this was cited by another doctor reporting a case of asbestosis and lung cancer, who believed that
25 in order to prove a material was carcinogenic, it had to be demonstrated in experimental animals.
26 Like the rest of the world outside of a small circle including Lanza, this writer did not know of the
27 unpublished Saranac experiments on asbestos and cancer. (Exhibit 1, Castleman, p. 92; Exhibit 65,
28 "Asbestosis and Lung Cancer in the Case of an Asbestos Spinner.")

1 51. In 1952, Lanza published a paper entitled "Asbestosis" in which he noted that
2 authorities in Great Britain regarded cancer of the lungs as a frequent sequelae to asbestosis. He
3 wrote that this is not the experience in Canada or the United States. Lanza related that he had just
4 spent several days with the Johns-Manville medical director Kenneth Smith at the firm's large mine
5 in Asbestos, Quebec; Smith had showed him X-rays and told Lanza there was no unusual experience
6 with lung cancer. Lanza suggested that the asbestos fibers in various parts of the world might have
7 different pathological results. (Exhibit 66.)

8 52. The U.S. National Cancer Institute held a Conference on Environmental Carcinogens"
9 in September, 1955. The expert panel on asbestos consisted of Lanza's fellow NYU faculty member
10 W.E. Smith, Dr. Vorwald, and Dr. Kenneth Smith of Johns-Manville. The panel rated the
11 epidemiological evidence with a question mark and indicated that there was "0" experimental data
12 available. Dr. W.E. Smith was unaware of the Gardner cancer experiment until 1989, and he
13 communicated to me that it would have been of interest and importance at the time it was done.
14 (Exhibit 1, Castleman, p. 72.) When he heard of efforts to get NYU to rename the Anthony Lanza
15 Research Laboratories in the late 1980s, Smith commented that having the university laboratories
16 named after Lanza was "rather like dedicating a synagogue to Hitler." (Exhibit 67, Letter W. Smith to
17 C. Patrick, April 16, 1988.) Dr. Harriet Hardy agreed that NYU should change the name of the Lanza
18 building after seeing some of the papers that had been revealed in litigation. "I shiver to think what
19 the good Lord did with Lanza and Vorwald," she wrote. (Exhibit 68, Letter H. Hardy to B.
20 Castleman, May 15, 1987)

21 **D. Braun/Truan Report**

22 53. In 1956/1957, J-M's president was on the board of trustees of the IHF. Met Life's Dr.
23 Shepard was a member of its medical committee. (Exhibit 69; Industrial Hygiene Foundation,
24 "Activities," 1956-1957.) Met Life also was involved with this IHF epidemiology study because it
25 owned Sun Life Assurance Company of Canada, which made available data for the study. (Exhibit
26 70, Aaron Tr., 2-14-01, pp. 183-184; Exhibit 71, Quebec Asbestos Mining Association, "An
27 Epidemiological Study of Lung Cancer in Asbestos Miners," Braun and Walmer, September 1957,
28 pp. i-ii.) The IHF did this study of asbestos miners for the Quebec Asbestos Mining Association.

1 The original, unpublished report said that the 12.5 percent rate of lung cancer among workers dying
2 with asbestosis was significantly larger than would be expected. The report suggested this may have
3 been due to underreporting of asbestosis, which, if such a statement was published, would have
4 reflected badly upon industry medical clinics that had been publicly praised by Lanza. (Exhibit 71,
5 Quebec Asbestos Mining Association, "An Epidemiological Study of Lung Cancer in Asbestos
6 Miners," Braun and Walmer, September 1957, pp. 53-54; Exhibit 66, "Asbestosis.")

7 54. For publication, the draft report was modified to delete all references to the lung
8 cancer rate among workers dying with asbestosis. (Exhibit 72, letter December 30, 1957, K. Smith of
9 J-M to I. Sabourin.) The final report, entitled "An Epidemiological Study of Lung Cancer in
10 Asbestos Miners," by Braun and Truan, was welcomed for publication by editor Herbert Stokinger
11 and published in the AMA Archives of Industrial Health. It concluded, instead of the original finding
12 that the lung cancer death rate in asbestotics was greater than expected and significant, that on the
13 basis of what was represented to be complete and reliable data, the miners "do not have a
14 significantly higher death rate from lung cancer than do comparable segments of the general
15 population." (Exhibit 73, p. 651.)

16 55. Dr. Stokinger was in the 1950s a key member of the Committee on Threshold Limits
17 of the ACGIH, which published the TLVs. He would become Chairman of the Committee from 1962
18 through 1977. (Exhibit 1, Castleman, pp. 96-97) Stokinger was pleased to see that the conclusion of
19 the Braun/Truan report was against the association of lung cancer and asbestos. (Exhibit 74, Letter
20 Jan. 20, 1958, H. Stokinger to D. Braun.) Stokinger had himself relied on the 1952 article published
21 by Lanza, in stating that workers in the US asbestos industry do not get cancer as do those in the
22 European industry. (Exhibit 30, Aaron Tr., 2-05-01, pp. 128-129; Exhibit 75, Stokinger, "Standards
23 for Safeguarding the Health of the Industrial Worker," published in Public Health Reports, January
24 1955, p. 75; Exhibit 76, Stokinger, "Toxicologic Aspects of Occupational Hazards," Annual Review
25 of Medicine 7: 177-194, 1956.)

26 56. The original TLV for asbestos was created with Met Life's involvement. The initial
27 authors of the report that became the basis of the asbestos TLV included one Miller, a pathologist
28 who worked at the U.S. Public Health Service, but whose entire salary was paid by Met Life.

1 (Exhibit 77, Aaron Tr. 2-02-01, pp. 59-61; Exhibit 78, Aaron Tr. 2-12-01; pp. 52-53.) Met Life's Dr.
2 Lanza was one of the key players in organizing the IHF. The IHF formation correspondence
3 indicates that industry planned the use the TLV in a legal defense to oppose compensation claims for
4 dust diseases of the lungs. (Exhibit 77, Aaron Tr. 2-02-01, pp. 115-116.)

5 57. Dr. Vorwald was on the ACGIH TLV committee from 1951-1956. He apparently did
6 not disclose the Saranac experimental cancer findings to that committee.

7 **E. Met Life's Influence**

8 58. In 1927, Met Life was the largest insurance company, indeed the largest financial
9 institution, in the world, according to Haley Fiske, its president. Its assets totaled \$2.25 billion. It
10 insured one-fifth of the entire population of the United States and Canada. "The Metropolitan – a
11 Mother's Care for the Millions that Own It," address of Haley Fiske, November 21, 1927, Los
12 Angeles, California. (Exhibit 79.)

13 59. A book commissioned by Met Life in 1943 characterized the company as "the largest
14 financial corporation in the world." (Exhibit 80, Dublin, "A Family of Thirty Million," p. 5
15 Metropolitan Life Insurance Company 1943.) At the end of 1938, it had assets of nearly \$5 billion.
16 (Exhibit 81, Marquis James, "The Metropolitan Life: A Study in Business Growth," p. 349 (Viking
17 Press 1947)).

18 60. Met life invested heavily in the asbestos companies, including in particular J-M from
19 1929-1944, 1947-1965 (1966 is missing) and 1967-1970. It invested in numerous others from 1938-
20 1974. (Exhibit 82, letter, February 7, 1991, Ms. Duprel at Maples-Lomax to B. Castleman
21 summarizing Met Life annual statements).

22 61. Met Life provided a line of credit to J-M in the amount of \$25 million, annually, from
23 1947-1963. (Exhibit 83, 1948 J-M Annual Report, p. 11.)

24 62. The chairman of the board of Pittsburgh-Corning was also the chairman of the board
25 of Owens-Corning Fiberglas, both of which were companies making asbestos-containing products.
26 That person was a member of the Met Life board of directors. (Exhibit 61, Aaron Tr., 2-13-01, p.
27 146.)

28

1 63. Met Life sold group life insurance to the companies, and offered accident and health
2 coverage to some, with an extra loading for asbestos companies such as J-M. (Exhibit 1, Castleman,
3 pp. 654-655.)

4 64. Met Life had what has been characterized as the premier, the biggest, the best, and in
5 some cases the only insurance consulting firm on occupational worker health issues in the United
6 States. (Exhibit 30, Aaron Tr. 2-05-01, p. 94.) Lanza had tremendous influence in the community of
7 occupational health physicians. Lanza and Drs. Gardner and Vorwald were among the most well-
8 recognized authorities on dust diseases of the lungs in the country. (Exhibit 30, Aaron Tr., 2-05-01,
9 pp. 115, 155.)

10 65. In the time of crisis that led to the formation of the IHF, many of the largest industries
11 in the country looked to Met Life as the place to go for help "in dealing with the problem that at
12 present is a serious menace to them from an economic standpoint." (Exhibit 84, Memo, February 27,
13 1935, Lanza to Armstrong.)

14 66. Soon after Lanza started working at New York University, he brought over Dr. Gerrit
15 Schepers from South Africa for training. Dr. Schepers went around to asbestos plants and mines and
16 wrote up his findings, intending to provide them to his government. This report was required by
17 Lanza as a "thesis" to complete work at NYU. Then, Lanza brought Schepers to see J-M corporate
18 attorney Vandiver Brown, who was upset about the part on cancer in the workers and told him to
19 suppress it. The report did not see the light of day after it was submitted to the government in South
20 Africa, where asbestos mining was a major industry. (Exhibit 1, Castleman, pp. 64-66; Exhibit 85,
21 Testimony of Gerrit W.H. Schepers, M.D., Bob Alan Speake v. Johns-Manville, No. 160993,
22 December 14, 1981).

23 67. By 1948, a Met Life policyholder manufacturing chromates had had "a number of
24 claims due to lung cancer due to chrome." In 1951, Lanza met with the US Surgeon General
25 concerning an epidemiology study co-authored by Dr. Wilhelm Hueper of the National Cancer
26 Institute. Lanza stressed that the government needed industry cooperation, and following this
27 meeting, Dr. Hueper was forbidden to do any more investigations into occupational cancer in
28 American industries. The chromate study was published without the name of Hueper as an author,

1 enabling the industry to argue that the federal government had withheld its endorsement over
2 disagreements with the report. This is discussed in Lanza's correspondence with executives at
3 Mutual Chemical and Diamond Alkali, Met Life policyholders. (Exhibit 1, Castleman, pp. 73-74.)

4 68. In 1947, a study was planned by state government officials into the silicosis hazard at
5 Johns-Manville's diatomaceous earth facility in Lompoc, California. This was prevented when
6 Lanza gave assurances that the dust problem was under control. Met Life Vice President William
7 Shepard gave similar assurances to Dr. Herbert Abrams of the California Department of Public
8 Health, even as workers' compensation claims were being filed by employees. Lanza and Shepard
9 continued to oppose disclosure, independent study, and dust control requirements at Lompoc.
10 (Exhibit 1, Castleman, p. 654; Exhibit 86, Testimony of Herbert K. Abrams, MD, In re: Asbestos,
11 No. 92-C-888, April 19, 1994; Exhibit 52, "Some Hidden History of Occupational Medicine.")

12 69. At New York University, Lanza became enraged when Dr. W.E. Smith brought him
13 an unpublished report on high lung cancer rates at a British asbestos plant in 1954. Smith wanted to
14 do experimental animal studies on asbestos and cancer (he did not know of the suppressed Saranac
15 studies). Dr. Smith was soon fired by the university, and he believed that the exchange with Lanza
16 about asbestos was the immediate cause of that. (Exhibit 1, Castleman, p. 85; Exhibit 87, Deposition
17 of W. Smith.)

18 70. An indication of Met Life's influence appears in a "Claims Medical Manual" of Aetna
19 Life and Casualty, of December 1978. That manual reflects that "Lanza's work suggested that
20 asbestos was not really a problem and it had the effect of dampening research in the area." (Exhibit
21 88.)

22 71. Philip Enterline was a professor of biostatistics at the University of Pittsburgh,
23 Pennsylvania. He has given an affidavit dated March 7, 1991 (Exhibit 89), reflecting that he
24 reviewed all the medical literature published on asbestos and cancer from 1934-1964, prepared a
25 book in 1978, updated in 1980. He conducted the review at the request of the Asbestos Information
26 Association. He had reviewed the 1951 article by Vorwald and Pratt. He had written that in the
27 United States there had been a twenty-year "international lag" in the acceptance of the causal
28 connection between asbestos exposure and cancer. The affidavit reflects that he had recently

1 reviewed the unpublished Gardner monograph ("Outline of Proposed Monograph on Asbestosis")
2 (Exhibit 40), which contained the findings about the 81.8% tumor incidence in mice exposed to
3 asbestos, an incidence Gardner reported was excessive. Enterline noted that finding was not reported
4 in the 1951 published article by Vorwald and Pratt. He gave the opinion that if these Gardner
5 findings had been published in a reputable scientific journal, that would have accelerated in this
6 country the acceptance of a causal relationship between asbestos and cancer. I agree with that
7 opinion. (Exhibit 30, Aaron Tr. 2-05-01, pp. 111-116.)

8 **III. MET LIFE AND JOHNS-MANVILLE**

9 **A. Met Life Agreement to Perform Industrial Hygiene Services**

10 72. Lanza attended a meeting on November 28, 1933 at J-M's offices. Lanza indicated
11 that if his survey could be approved, Met Life could be counted upon to take dust counts at various
12 plants, do x-ray examinations of employees, and make recommendations as to dust control. (Exhibit
13 20, Memo November 28, 1933.)

14 73. At a meeting on January 4, 1934, J-M and Raybestos-Manhattan officials advised of
15 their decision to avail themselves of the assistance offered by Met Life. Met Life also agreed to train
16 company employees to make dust counts. Lanza pointed out that Met Life representatives were as
17 qualified as any to advise about respirators. (Exhibit 21, Memo January 4, 1934.)

18 74. J-M did not have its own corporate medical director until 1952.

19 75. On August 29, 1933, J-M's S.A. Williams, Vice President, forwarded to A.R. Fisher,
20 manager of the Manville, New Jersey J-M plant, a "Personal and Confidential" letter enclosing a
21 copy of questions asked of Lanza by J-M's physician at its Waukegan, Illinois plant and his answers
22 "verbatim." (Exhibit 90.)

23 Question 1 dealt with use of respirators. Lanza advised, in substance, that they were not
24 satisfactory.

25 Question 2 and the Lanza answer were as follows:

26 Question No. 2.

27
28 Do you agree with my recommendation that employees definitely be
made aware of the fact that asbestos dust is hazardous to their health? My

1 idea is that a poster be placed at one or more conspicuous places in the
2 department, signed by the physician, stating that the dust is injurious,
advising the continuous use of respirators while at work and cleansing of
hands before eating lunch and after work.

3 Your comment on this please and particularly is there any additional
4 advice that should be given?

5 Answer:

6 This is partially answered by No. 1. I doubt if the hazard is sufficient
7 to justify warning posters as might be used where lead, benzol, or carbon
8 monoxide are concerned. This is especially true in view of the
9 extraordinary legal situation. If anything is said at all, it would be better to
make a general statement that the Company is taking steps to control the
amount of dust in the air for general health purposes. Any action
contemplated at Waukegan would probably be influenced by the
experience at other plants of the Company.

10 76. Clearly, the J-M physician was proposing to warn the workers about the hazards of
11 asbestos dust. Dr. Lanza advised against providing such a health warning about asbestos and
12 recommended instead a vague statement that J-M was controlling the dust for health purposes, with
13 the effect of misleading the workers. This was prescribed by Dr. Lanza "in view of the extraordinary
14 legal situation," notwithstanding the medical reality of the health hazard from asbestos dust.

15 77. In the Waukegan document, Question 5 to Lanza and his answer were:

16 Question No. 5

17
18 I have made a diagnosis of asbestosis on an employee who has been
19 working in the card room of the textile department six years. This place is
extremely dusty. He is not disabled. In my judgment the best disposition
20 of such a case is to remove him from the dust and give him a job in some
other part of the plant. From your remarks in Chicago I believe this was
your advise [sic] as to the disposition of such cases.

21 Answer:

22 It is difficult to answer this question. I think it would depend upon the
23 man's age, the nature of his work, his length of service, and other
24 considerations which might have some bearing. If he is well along in years
and shows no disability, it may be just as well to leave him alone. One of
25 the difficulties and vexations in trying to deal with the problems of
pneumoconiosis is that economic as well as production factors must be
balanced against the medical factors.

1 Lanza thereby advised J-M's plant physician to leave some workers with asbestosis in dusty
2 operations, evidently without even being informed of their diagnoses, in weighing economic and
3 production factors against medical factors

4 **C. The Manville 1945 Inspection**

5 78. In 1945, the War Production Board ordered the New Jersey Department of Health to
6 investigate the J-M plant at Manville on the suspicion that there were unhealthy working conditions
7 there. Met Life interceded by telling the Director of Industrial Hygiene for New Jersey that the
8 asbestosis hazard at that plant was under control and had been for many years. New Jersey accepted
9 these findings and reported to the War Production Board. The case was closed. (Exhibit 91, "Annual
10 Report of the Industrial Health Section, 1945," pp. 1-2.) The Met Life allegations stood in stark
11 contrast to the confidential Hemeon study of the same plant in 1947, which found potential cases of
12 asbestosis amounting to about 20%, and poor dust conditions consistently throughout the plant.
13 (Exhibit 1, Castleman, pp. 254-255.)

14 **D. J-M Followed the Met Life Path**

15 79. J-M followed the path set for it by Met Life. It did not post warnings in its plants or
16 otherwise warn its workers about the dangers of asbestos dust. J-M did not place warning labels on
17 its asbestos insulation products until 1964 and on its sacks of asbestos until 1969. (Exhibit 1,
18 Castleman, p. 611.)

19 80. J-M did not inform its employees when their medical examinations revealed
20 asbestosis, as a matter of company policy, until 1971 or 1972, at least at J-M's Pittsburg, California
21 plant. (Exhibit 1, Castleman, p. 612; Exhibit 92, Sworn Statement of Wilbur Ruff, Jan. 11, 1978.) In
22 1949, J-M's Smith found four normal x-rays out of 708, of Canadian miners, and decided not to tell
23 the workers, so the company could benefit from their experience. (Exhibit 30, Aaron Tr., 2-05-01,
24 p. 142.)

25 81. Mr. Charles Roemer has submitted an affidavit in which he described a meeting with
26 J-M officials, including Vandiver Brown and the J-M president, Lewis Brown, in 1942 or 1943.
27 Vandiver Brown advised that J-M's physical examination program produced evidence of asbestos
28 disease among workers. It was J-M's policy to not tell employees of the positive x-ray findings.

1 Brown pointed out that if the workers were told, they would stop working and file claims against J-
2 M, and it was J-M's policy to let them work until they quit work because of asbestosis or died as a
3 result of asbestos-related diseases. (Exhibit 93, Charles H. Roemer Affidavit, September 29, 1982;
4 reprinted in Exhibit 1, Castleman, pp. 160-161.)

5 My book, at p. 489, also contains an excerpt from a deposition of Mr. Roemer, Exhibit 94:

6
7 I'll never forget, I turned to Mr. Brown, one of the Browns made this crack
8 (that Unarco managers were a bunch of fools for notifying employees who
9 had asbestosis), and I said, "Mr. Brown, do you mean to tell me you would
10 let them work until they dropped dead?" He said, "Yes. We save a lot of
11 money that way."

12
13 Testimony of Charles H. Roemer about the meeting of Unarco officials
14 with Johns-Manville President Lewis Brown and his brother, Vandiver,
15 in 1942 or 1943. (Deposition taken April 25, 1984, Johns-Manville
16 Corp. v. United States, U.S. Claims Court Civ. No. 465-83C.)

17
18 82. J-M's policy to not advise its workers of their asbestos-related illnesses continued, and
19 became self-perpetuating, with ever increasing numbers of workers who were affected, were not told,
20 and were still working. A January 12, 1963 internal Manville document, written by an official who
21 appears to have been at the Waukegan plant, reflects the dilemma:

- 22
23 (1) From a moral standpoint, employees identified as having
24 pneumoconiosis should be told of their condition promptly.
25
26 (2) From an ethical standpoint, Doctors should tell these people of their
27 condition promptly.
28
29 (3) From a practical standpoint, if we tell 25 persons they are
30 pneumoconiotic within the next two to six weeks, there may be an
31 undesirable panic or near-panic.

32 (Exhibit 1, Castleman, p. 186; Exhibit 95, January 28, 1963 "Confidential" memorandum entitled
33 "Pneumoconiosis Cases.") This same memorandum reflects there were 71 "red slip" cases, people
34 who had "been medically identified as having one of three stages of pneumoconiosis," and
35 approximately 225 "pink slip" cases, people "possibly" showing signs of pneumoconiosis, where in
36 each case a doctor advised management to keep the employee out of toxic dust. Management
37 couldn't handle the problem of telling these workers about their "possible" condition, so it was
38 decided to collect all "pink slips" from safety and personnel departments, and destroy them, along

1 with all records or codes that refer to "pink slip" cases. The only information about "pink slips" was
2 to be in the medical records.

3 83. A 1979 J-M memorandum to the Board Chairman noted that the company's credibility
4 with legislators, juries, and the public was being undermined by evidence contrary to J-M's public
5 statements. One example given was that the "J-M position" was that, since 1964 the corporation had
6 "come clean" with employees about asbestos hazards. The memo contrasts this with the "FACT"
7 that, according to employees, people worked for 35 years at J-M and were never told about the
8 dangers, and it was company policy into the early 70's not to tell a person about his illness. (Exhibit
9 96, January 12, 1979 J-M Internal Correspondence, C.G. Links to J:A. McKinney.)

10 84. I have been involved in historical research on asbestos and expert testimony in
11 asbestos litigation for over 30 years, and I have never encountered a case where an historic document
12 I had been presented with turned out to be forged or fraudulent. I therefore have every reason to
13 believe that the historic documents referred to herein and in my writings are all true copies and are
14 exactly what they appear to be.

15 16 CONCLUSIONS

17 1. J-M knowingly inflicted asbestos dust upon its workers at levels that it knew caused
18 disease and death, for decades commencing no later than 1929 and continuing through at least the
19 1960s. It did so deliberately, not warning its workers about the hazards, and leaving them in
20 dangerous asbestos dust conditions when management knew many of them suffered from asbestos-
21 related diseases.

22 2. Met Life knew that the conduct of J-M constituted a breach of its obligations to its
23 workers.

24 3. Met Life gave substantial assistance to J-M in breaching its duties to its workers, by,
25 among other things referred to above, (a) knowingly assisting in the development and promulgation
26 of unsafe TLV of 5 MPPCF; (b) deliberately doctoring the published report of its 1929-1931 plant
27 studies, at J-M's behest, to remove the information that the safe level for asbestos dust should be less
28 than for silica, which Met Life knew to be true, (c) by carrying out the wishes of J-M and other

1 asbestos companies to instruct Saranac to delete from its published study the information that
2 asbestos caused cancer in mice; (d) by participating in the alteration of the Braun/Truan IHHF report
3 that omitted key cancer findings; and (c) by advising J-M not to warn its workers about the hazards of
4 asbestos dust, and not to remove affected workers from the dusty conditions.

5 4. Met Life supplied information of certain facts about the results of exposure to asbestos
6 dust, but suppressed other facts, in particular the unsafe nature of the TLV, and the information that
7 asbestos had been shown to cause cancer, such that what it did supply was likely to mislead people by
8 reason of the failure to communicate the facts suppressed;

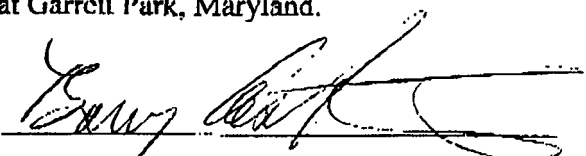
9 5. Met Life undertook to speak about health effects of exposure and safe levels of
10 exposures but suppressed material facts;

11 6. Met Life knew that J-M was consciously or without reasonable care concealing
12 material facts regarding the dangers of asbestos, and gave substantial assistance to J-M in doing so.

13 7. The conduct of Met Life, as it affected plaintiff plant workers through the conduct of
14 J-M, substantially increased the risk of harm to those plant workers.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct.

17 Executed this 13 day of April, 2007, at Garrett Park, Maryland.

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21 Barry I. Castleman, Sc.D.