

FILE NAME: Owens-Corning (OC)

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Kanzer trial testimony 11/1/95

13. Vyverberg + Schekla wrote NIMH Brochures

69-70 La hazard could've been verified epidemiologically
in 1935; never heard of a study of
signif occup. ash. exposure that
didn't find an excess of LCa

145 Vyverberg was trained as a businessman

148-9 } "nontoxic" on 1956 brochure was "false because . .
(OCF) knew 25 years before 1988 that airborne
asbestos causes disease." Yes.

152 } Even more clearly admitted wrt/1959 OCF "nontoxic" ad

164 He's never seen a spontaneous (non-ash.) mesothelioma

165 No such thing as a period of exposure (A) as short as to render
person immune to M

172 Believed Califano statement accurate when insured in 1975

11/6/95

65, 70 admits ACGIH said TLV only to prevent A's not Ca

77 in response to 32/34 dust counts > TLV, they ^(exp) instituted resp. program
but no warnings to workers

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IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
MC LEAN COUNTY, ILLINOIS

MARK HICKS, Special Admin. of)
the Estate of THELMA HICKS,)
deceased, and COLEMAN HICKS, JR.,)

Plaintiffs,)

v.)

No. 94 L 308

OWENS-CORNING FIBERGLAS CORPORA-)
TION and ILLINOIS CENTRAL)
RAILROAD COMPANY,)

Defendants.)

DONALD VAN WINKLE and LINDA VAN)
WINKLE,)

Plaintiffs,)

v.)

No. 95 L 76

OWENS-CORNING FIBERGLAS CORPORA-)
TION and ILLINOIS CENTRAL)
RAILROAD COMPANY,)

Defendants.)

REPORT OF PROCEEDINGS
TESTIMONY OF DR. JON L. KONZEN
NOVEMBER 1, 1995

Susan E. Geshwilm, CSR
408 Law & Justice Center
104 West Front Street
Bloomington, IL 61701

11/7/95

1 A I'm not sure.

2 Q Did you personally work on the drafting of
3 the pamphlet?

4 A I probably saw a draft, but I didn't draft
5 it.

6 Q Do you remember who drafted it?

7 A Not with certainty.

8 Q Can you give us any help at all as to the
9 names of the people that you remember toiling on
10 that task?

11 A Um, John Vyverberg and Cliff Sheckler.

12 Q Now John Vyverberg was a colleague of
13 yours there at Owens-Corning. Correct?

14 A Yes.

15 Q That pamphlet came out about when?

16 A 1969, 1970.

17 THE COURT: And Sheckler worked for
18 Johns-Manville?

19 A Yes.

20 Q Now were either one of those gentlemen
21 physicians?

22 A No.

23 Q Did most -- were most of the members of
24 the Health and Safety Committee physicians?

1 Q Actually, you agree someone should have
2 done it right after Lynch published his article in
3 '35, right? It wouldn't have been that hard to
4 do. You just find the first three hundred death
5 certificates you can out of a given plant, see how
6 many lung cancers there are, go to the other data
7 and see how many you would have expected in a
8 group of that characteristics, age, sex, so forth,
9 and see well are there more lung cancers or not.
10 And that should have been done two days after
11 Lynch's article appeared in '35. Shouldn't it?

12 A That's not the way science works.

13 Q Sir, we'll get to how science does or
14 doesn't work or at least what you describe as
15 science. But let's just talk about the
16 philosophical matter, that's what should have been
17 done in '35. Isn't it sir?

18 A It would certainly be one thing that could
19 be done.

20 Q And if that had been done in '35, do you
21 have any reason to believe that there would have
22 been anything other than an excess of lung cancers
23 among the group study?

24 A I don't know what the outcome of that

1 study would have been.

2 Q Have you yourself ever read a study of
3 people with a significant occupational exposure to
4 asbestos and the reporter found that there was no
5 excessive lung cancer among those people?

6 A No.

7 Q Well of course not. No reason to believe
8 that wouldn't have been found in '35. Is there?
9 Those people were heavily exposed to asbestos.
10 Weren't they?

11 A Um, yes they were.

12 Q Now to get back to your colleague, Dr.
13 Bender, in this sentence, "Although the
14 association of asbestos exposure and lung cancer,"
15 then he has in parentheses, "(lung tumors and
16 mesothelioma) was once a matter of debate, the
17 recognition of the association occurred during the
18 fifties and sixties."

19 What you're saying is that people just
20 started thinking about it in the fifties and
21 sixties and it was some later time that people
22 accepted the association between asbestos and
23 those two particular cancers?

24 A No, what I'm saying is it became a

1 wrote the pamphlet?

2 MR. MODESITT: I object to the line of
3 questioning, Your Honor. The witness has said
4 three or four times already he doesn't remember
5 what was in the pamphlet.

6 THE COURT: Sustained.

7 BY MR. WALKER:

8 Q What was the training of Vyverberg?

9 A He was a businessman.

10 Q Do you recall anything else besides the
11 Western States Program and the NIMA pamphlet that
12 Owens-Corning did to communicate to these people
13 who were at risk of these diseases what
14 Owens-Corning knew about these diseases?

15 A During what time period?

16 Q Any time.

17 A Um, there was an educational program at
18 Berlin.

19 Q We talked about that. It started in '76
20 and '77. Right?

21 A Yes. Um, yes.

22 Q Anything else?

23 A Not that I can think of.

24 Q Now Dr. Konzen, do you recognize this as

1 various means. Correct?

2 A Yes.

3 Q And when he got to a corner and he needed
4 to make an elbow or when the next section was too
5 long or something, why it was well known that he
6 would have to saw it or rasp it or do various
7 things to make it fit the pipe that he was
8 insulating. Correct?

9 A Yes.

10 Q And all those things were known to give
11 off dust. I mean by definition, sawing or rasping
12 creates dust?

13 A Yes.

14 Q Okay. Back to the easy fabrication.
15 "Ordinary tools of the trade sufficient for all
16 cutting, sawing or scoring, non-irritating to the
17 skin and nontoxic."

18 Now the portion of this advertisement that
19 says that Kaylo was nontoxic was false in October
20 of 1956 and false today. Isn't that true?

21 A It was incorrect.

22 Q Well it was false because the party making
23 the statement, Owens-Corning Fiberglas knew as you
24 have told us earlier, knew twenty-five years

1 before 1968 that airborne asbestos causes disease.
2 Isn't that true?

3 A Yes.

4 Q And you were putting, not you, but
5 Owens-Corning was putting asbestos in Kaylo in
6 October of '56 -- or Owens Illinois was putting it
7 in there and Owens-Corning was selling it.
8 Correct?

9 A Yes.

10 MR. WALKER: Would this be a time for a
11 recess Judge?

12 THE COURT: That would be fine. Take a brief
13 recess ladies and gentlemen. If you will close
14 your note pads and step back to the jury
15 deliberation room. Relax for a few minutes.
16 Don't have any discussion about what's gone on in
17 the courtroom in the last three days.

18 (A RECESS WAS TAKEN.)

19 THE COURT: You may be seated. Record
20 reflect the jurors have returned to the courtroom.
21 You may continue.

22 BY MR. WALKER:

23 Q Dr. Konzen, do you see exhibit 35?

24 A Yes.

1 Q Now that's a brochure about Kaylo that is
2 on the back page is a little hard to read, but the
3 very lowest right-hand corner is dated September
4 of '59. Correct?

5 A Yes.

6 Q Now earlier we had talked about exhibit 33
7 was in 1956. The reason exhibit 33 shows in the
8 lower left-hand corner that the trademark is owned
9 by Owens Illinois is because at that point Owens
10 Illinois owned the plant at Berlin, New Jersey.
11 Correct?

12 A Yes.

13 Q And owned the trademark, owned the right
14 to use the word Kaylo as a trademark in 1956?

15 A Yes.

16 Q But in '58, Owens-Corning Fiberglas bought
17 the plant, the trademark, the whole Kaylo program.
18 Correct?

19 A Yes.

20 Q So, by '59 Owens-Corning owned the plant
21 and the product and the trademark and the whole
22 thing. Right?

23 A That's my understanding.

24 MR. WALKER: I move exhibit 35 into evidence

1 Your Honor.

2 MR. MODESITT: No objection.

3 THE COURT: Be admitted.

4 MR. WALKER: May I publish?

5 THE COURT: You may.

6 BY MR. WALKER:

7 Q Doctor, if you would turn to the fourth
8 page, it's numbered page four in the lower
9 left-hand corner. Do you see in the third
10 paragraph where Owens-Corning says "Kaylo pipe
11 insulation applies easily and quickly with
12 standard application methods"?

13 A Yes.

14 Q In the next sentence, Owens-Corning says
15 "Ordinary tools of the trade are sufficient for
16 all cutting, sawing or scoring." See that?

17 A Yes.

18 Q Do you see the next sentence? "It is
19 non-irritating to the skin and nontoxic." Do you
20 see that?

21 A Yes.

22 Q The reference there is to the product
23 Kaylo. Correct?

24 A Yes.

1 Q In September, 1959, Owens-Corning
2 Fiberglas Corporation knew that statement was
3 false, because it knew that the dust given off
4 from Kaylo when it was cut, sawed or scored, was
5 toxic. Isn't that true sir?

6 A Yes.

7 Q Now on a number of occasions today I have
8 asked you to look at plaintiffs' exhibit 18, the
9 memo that you wrote in September of 1972, the
10 three page memo. And I think you have indicated
11 that if you -- you wouldn't agree that the
12 sentence about occupational exposure to asbestos
13 is known to be carcinogenic, you wouldn't have
14 agreed to that in 1953. Would you have agreed or
15 do you agree that occupational exposure to
16 asbestos was implicated as being carcinogenic by
17 1953?

18 A Well there were people, um, where it was
19 felt to be this, to be carcinogenic. As I said,
20 even the federal government as late as the mid
21 sixties in the book that I referred to said that
22 the -- that there is a good possibility that it
23 is. But the final verdict wasn't in yet.

24 Q Would it have been accurate to say in 1953

1 have been primarily the workers, and yes, they
2 were the ones.

3 Q In each instance of a mesothelioma that
4 you have reviewed, the victim him or herself had
5 an occupational exposure to asbestos?

6 A Yes.

7 Q So a thing that you and I have in common
8 is we have never seen one of these spontaneous
9 mesotheliomas. Correct?

10 A I have not identified one.

11 Q Now Don Van Winkle worked at the
12 Bloomington asbestos plant for four or five months
13 in 1959 and was diagnosed with mesothelioma
14 earlier this year, and no one has found a -- well
15 let me ask it differently. If you find a
16 mesothelioma victim, are you able to, while they
17 are alive or after they have died, examine any
18 portion of their body to determine which asbestos
19 fiber it was that caused them to develop
20 mesothelioma?

21 A Um, well I guess the answer is no because
22 you don't know -- yeah.

23 Q Okay. So it is the total and cumulative
24 effect of all the asbestos to which they have been

1 exposed is the cause of their asbestos disease.

2 Correct?

3 A Yes.

4 Q Now Don Van Winkle worked at the
5 Bloomington plant in the later part of 1959,
6 diagnosed with mesothelioma in 1995. In your
7 opinion, was his occupational exposure to asbestos
8 at that plant, the plant that you had described to
9 you and you agreed was -- had conditions that were
10 unbelievably bad, was his occupational exposure to
11 asbestos a cause of his mesothelioma?

12 A How long did you say he worked there?

13 Q Four months in 1959.

14 A It's possible.

15 Q Is there such a thing as a period of
16 exposure that is so short that the exposed person
17 would be immune from the risk of getting
18 mesothelioma?

19 A Not that I know of.

20 Q And if that -- and if that's the length of
21 time that he worked at the Bloomington plant, are
22 you able to tell us about anything else that would
23 have caused his mesothelioma other than that work
24 at the plant?

1 This publicity caused concern among those
2 Berlin employees who had been exposed to asbestos
3 in the past and also raised the question of
4 continued exposure because of plant contamination.
5 The plant received two phone calls from former
6 workers. Both were informed that corporate
7 headquarters were reviewing the matter and their
8 phone call would be returned."

9 Did I read that correctly?

10 A You did.

11 Q And sir, you are the author of this memo,
12 correct?

13 A Yes.

14 Q Now there is nothing about this statement
15 that Joseph Califano released that you found to be
16 medically inaccurate. Is there?

17 A I don't remember the entire statement, but
18 at the time I believe that it was medically
19 accurate.

20 Q Okay. And as you think about it sir,
21 wasn't it after the Califano statement was
22 released that the educational program was
23 conducted at Berlin?

24 A Yes.

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REPORT OF PROCEEDINGS
TESTIMONY OF DR. JON L. KONZEN
NOVEMBER 6, 1995

Susan E. Geshwilm, CSR
408 Law & Justice Center
104 West Front Street
Bloomington, IL 61701

1 Q Let's stop there. That is a statement by
2 the committee saying that the only disease that it
3 was focusing upon is asbestosis. Correct?

4 A It says that -- just what it says.
5 Relates to the prevention of asbestosis.

6 Q Was there anything in this or any
7 publication of the TLV committee at any prior date
8 to indicate that it ever thought that the TLV had
9 anything to do with the prevention of cancer?

10 A Well if one accepts the premise that you
11 have to have asbestosis to have cancer, it
12 certainly would imply that.

13 Q Do you remember my question?

14 A Yes.

15 Q Okay.

16 A And the answer is no.

17 Q When you understood it, why did you
18 volunteer to give the other information?

19 A Because I felt it was important.

20 Q The price hasn't gone up over the weekend,
21 has it? What is the current rate for the time
22 that you are on the stand?

23 MR. MODESITT: Objection Your Honor, asked
24 -- and answered.

1 to see if whether or not asbestos caused cancer?

2 A No.

3 Q Now Driesen's study measured the presence
4 or absence of asbestosis. What study after --
5 excuse me. What study ever, let's say as of 1962,
6 what study had ever checked for the presence of
7 cancer in relationship to airborne levels?

8 MR. MODESITT: Object for the same reason
9 Your Honor.

10 THE COURT: Overruled.

11 A Um, no study.

12 Q So that's why the committee said right
13 there in 1962, the TLV is intended for the
14 prevention of asbestosis. There would have been
15 no statistical basis whatsoever for the committee
16 to say our TLV also protects against cancer.
17 Correct?

18 A Um, there wouldn't have been. But again,
19 I think that there -- no.

20 Q Now, you said that -- talking about dust
21 counts, you said that from time to time there
22 would be temporary excursions, and in the 1960s
23 this was not of any great practical significance.
24 Do you remember saying that?

1 the Bloomington plant operated by Owens-Corning
2 Fiberglas in the summer of 1970?

3 A Aside from the fact that it never -- that
4 amosite had never been reported as causing at that
5 time --

6 Q You've told us that Bloomington was
7 amosite and Wagner was crocidolite. Anything
8 else?

9 A No.

10 Q Did Owens-Corning warn the workers of the
11 potential hazards created by the fact that
12 thirty-two of the thirty-four counts were in
13 excess of the quote TLV?

14 A We instituted a respirator program. But
15 did we say anything else? No.

16 Q Doctor, let's -- let's see if we can get
17 this last question clear. Did Owens-Corning
18 Fiberglas Corporation warn the workers who were in
19 the air that was sampled and reported to you as
20 being in excess of the quote TLV unquote in
21 thirty-two out of thirty-four stations, did
22 Owens-Corning warn those people of the hazards
23 that existed as a result of those levels of
24 asbestos in the air that they were forced to