SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ERIE : CIVIL TERM : PART 2

JAMES W. GINTER,
Plaintiff,

-vs- Index #4061-2010

FORD MOTOR COMPANY,
Defendant.

Erie County Hall
Buffalo, New York
July 7, 2011

B E F O R E:

HONORABLE JOHN P. LANE,
Judicial Hearing Officer

A P P E A R A N C E S:

MICHAEL A. PONTERIO, ESQ.,
KEITH R. VONA, ESQ.,
Appearing on behalf of the Plaintiff.

BRIAN P. CROSBY, ESQ.,
C. CHRISTOPHER BRIDGE, ESQ.,
Appearing on behalf of the Defendant.

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(Whereupon the reporter marked the Technical Memorandum as Defendant's Exhibit Z for identification.)

(Whereupon the reporter marked the Technical Report as Defendant's Exhibit A-1 for identification.)

(Whereupon the reporter marked the Wear in Brake Materials as Defendant's Exhibit B-1 for identification.)

THE COURT: Bring the jury in you.

COURT OFFICER: Jury in. Good afternoon members of the jury.

THE JURY: Good afternoon.

THE COURT: Take a roll call.

(Whereupon roll call was taken).

COURT CLERK: All jurors and counsel are present, Your Honor.

THE COURT: All right. Proceed.

MR. CROSBY: The court reporter was just marking some exhibits for me.

THE COURT: Okay.

(Whereupon the reporter marked the Technical Memo as Plaintiff's Exhibit 35A for identification.)

(Whereupon the reporter marked the

Instructional Manual as Plaintiff's Exhibit 35B for identification.)

(Whereupon the reporter marked the FAST Evaluation as Plaintiff's Exhibit 35C for identification.)

(Whereupon the reporter marked the SAE Report as Plaintiff's Exhibit 35D for identification.)

(Whereupon the reporter marked the Inter-Office Memos as Plaintiff's Exhibits 35E and 35F for identification.)

(Whereupon the reporter marked the Lab Report as Plaintiff's Exhibit 35G for identification.)

MR. PONTERIO: May I proceed, Your Honor?

THE COURT: Well, we're continuing the witness from yesterday.

COURT CLERK: I remind you, Mr. Taylor, you are still under oath.

THE WITNESS: Thank you.

MARK TAYLOR, after having already been first duly sworn, was examined and testified further as follows:

THE COURT: Go ahead.

MR. CROSBY: Your Honor, we have done with consent of counsel, during plaintiff's case,

Plaintiff's Exhibit 35 which was the transcript, the edited transcript of Mr. Taylor's testimony which was shown to the jury, was put into evidence appropriately along with the various exhibits to his testimony. What we have done is we have now marked separately each of those exhibits so if we pull one out, we know what they are, and I would just like to read into the record what the new numbers are for the attachments.

THE COURT: Okay. These are attachments to an existing exhibit?

MR. CROSBY: Exhibit 35. These were put in as part of the exhibit, but for reference purposes we marked them 35A, 35B, 35C and so forth.

THE COURT: Okay.

MR. CROSBY: 35A is the Applied Laboratory Technical Memorandum. 35B is entitled Instruction Manual for Ford FAST machine. 35C is a document entitled FAST Evaluation of Eleven Australian Ford Brake Linings.

THE COURT: You're going too fast for me. C is what?

MR. CROSBY: Is a document entitled Fast Evaluation of Eleven Australian Ford Brake Linings. 35D, Your Honor, and the reason I was smiling a moment ago along with counsel is the SEA report number 6700.

THE COURT: SEA?

MR. CROSBY: SEA 670079 which is the document that we were having a dispute over which was already in evidence. 35E is a document, Ford document dated September 17th, 1971.

THE COURT: What was that date?

MR. CROSBY: September 17, 1971. Subject is FAST Testing of Bendex D7131X, Semi-Metallic Friction Material. 35F is the Ford-Long L-O-N-G FAST Correlation. It's a Ford document dated January 16, 1966. And 35G is a Hooker Durez Laboratory Report dated February 20th, 1970. At this time, Your Honor, with the consent of counsel, we are going to move into evidence Defendant's Exhibits X, A1 and B1. Let me show them to counsel again.

THE COURT: Those are what?

MR. CROSBY: Defendant's Exhibit X -- actually, I'm not going to offer X. That's a duplication of one we just talked about. A1 is a Ford report SR73-64.

THE COURT: SR --

MR. CROSBY: 73-64. And Exhibit B1 is a document by A.E. Anderson entitled Wear in Brake Materials. We would seek to have those admitted into evidence.

THE COURT: Counsel?

MR. VONA: No objection.

THE COURT: No objection. They're received.

(Whereupon Plaintiff's Exhibits 35A through 35G were entered into evidence).

(Whereupon Defendant's A1 and B1 were entered into evidence).

CONTINUED DIRECT EXAMINATION

BY MR. CROSBY:

Q. Mr. Taylor, just a few very quick questions. First, as part of your investigation into the materials that Ford had on the FAST and FAST machines, FAST test and FAST machine, did you search to determine whether Ford Motor Company had ever obtained a patent on the FAST machine?

A. I did.

Q. And what did your search reveal?

A. Ford had no patent or has no patent on the FAST machine.

Q. Yesterday we talked about what is now in evidence, SAE paper from 1967. Do you recall that?

A. I do.

Q. In the course of your investigation, let me give it to you, referring you to Exhibit D, could you just read to the jury, please, the title of that document?

A. A New Laboratory Friction and Wear Test For the

Characterization of Brake Linings.

Q. And who are the authors?

A. Mr. Anderson, Mr. Gratch and Mr. Hayes.

Q. And were they at that time based upon your review of the documents all employees of Ford Motor Company?

A. They were.

Q. And are they in fact listed as such?

A. They are.

Q. And would you turn to the first full page under Introduction. Got that, sir? Page 561.

A. I'm there.

Q. And I would ask -- and I would like to put this up on the monitor, if you just read two sentences. Could you just read to the jury the sentence in the Introduction that begins, second full paragraph, In order?

A. In order to overcome these difficulties, some time ago Ford Motor Company initiated a program for the development of a new test methods that would be particularly suitable for quality control.

Q. Next sentence, please.

A. The result of this program has been the recent adoption of a new set of quality control specifications for all Ford passenger cars which have been, which have become effective with the 1967 model production.

Q. Would you read the first sentence of the next

paragraph, please.

A. The purpose of this paper is to discuss --

THE COURT: What was that year?

THE WITNESS: It's 1967, Your Honor.

THE COURT: '67.

THE WITNESS: The purpose of this paper is to discuss another new test which is also part of the new Ford Motor Company brake lining specifications.

BY MR. CROSBY:

Q. And the title of the article is called what?

A. A New Laboratory Friction and Wear Test For the Characterization of Brake Linings.

Q. And that paper was dated what?

A. It's 1967.

Q. Finally, sir, I would like to show you a document that has been placed into evidence as Plaintiff's Exhibit 35C. Do you have that, sir?

A. I don't.

Q. Here you go. And could you just read to the jury what the title of this document is?

A. FAST Evaluation of 11 Australian Ford Brake Linings.

Q. And would you please tell the jury what the first, read to the jury the first sentence, please?

A. The friction and wear characteristics of eleven Australian Ford brake linings supplied by Mr. F.P. Hill of

your department were investigating using Ford's FAST procedures.

Q. And would you move down, please, to the first sentence of the next paragraph and read that for the jury.

A. Enclosed is a copy --

Q. Hold on one moment, please. Would you read that please.

A. Enclosed is a copy of the report with the exception of a discussion of vehicle correlation for which we would appreciate your suggestion. We are enclosing also a copy of report ARM 66-7, April 1, 1966 instruction manual for the FAST machine which gives in detail the procedure used in our studies.

Q. And, sir, '66 -- what was the number on that please?

A. 35C.

Q. It was enclosed. Let me show you what has been previously marked into evidence as Plaintiff's Exhibit 35A and ask what the number of that document is?

A. 35A is ARM 66-7 dated April 1, 1966.

Q. So is that document 35A the document that's referred to?

MR. VONA: Objection, Your Honor, calls for speculation.

THE COURT: I'm not clear what the question is. Read it back to me.

(Whereupon the reporter read back the requested question)

THE COURT: Referred to what?

MR. CROSBY: In the other document.

THE COURT: What's your objection?

MR. VONA: Calls for speculation. These documents from the 60s -- I thought we established he wasn't going to decipher what they mean, judge.

THE COURT: Do you have some objection to a question or --

MR. VONA: I objected to the question. It calls for speculation. He doesn't have personal knowledge.

MR. CROSBY: Let me repeat it.

MR. VONA: He is interpreting the document from the '60's.

THE COURT: I'm not there yet. Will you look at 35A and tell us if it was from 1966.

MR. CROSBY: Let me go back and ask two questions again and see if they still have an objection.

BY MR. CROSBY:

Q. Mr. Taylor, would you read to the jury the first sentence of that second paragraph that was highlighted?

THE COURT: Which document?

MR. CROSBY: This is document number 35C.

THE WITNESS: Enclosed is a copy of the report with the exception of a discussion of vehicle correlation for which we would appreciate your suggestions.

BY MR. CROSBY:

Q. What's the next sentence?

A. We are also enclosing a copy of report ARM 66-7, April 1, 1966 instruction manual for the FAST machine which gives in detail the procedure used in our studies.

Q. Okay. My next question to you, Mr. Taylor, was would you please look at 35A and tell us what the date of that report is or that document is?

A. April 1, 1966.

Q. And what is the reference number of that document?

A. ARM 66-7.

Q. So based upon your knowledge of record keeping at Ford Motor Company, is this document --

THE COURT: Which document?

MR. CROSBY: 35A dated April 1st, 1966 bearing ARM 66-7, the document that's referred to in 35C.

THE WITNESS: It is.

MR. CROSBY: Thank you. Your Honor, those are all of the remaining questions that I had for

Mr. Taylor. We will rely upon the rest of his testimony that's been played by videotape.

THE COURT: Cross-examination.

MR. VONA: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. VONA:

Q. Good afternoon, Mr. Taylor.

A. Good afternoon.

Q. How are you doing today?

A. Very well, thank you.

Q. Good. Mr. Taylor, you're accustomed to giving testimony, are you not, sir?

A. I have in the past, yes, sir.

Q. Quite often before, right?

A. Past few years, yes.

Q. In fact I think when we met in December you'd given over 30 depositions that year alone, right?

A. Yes.

Q. I didn't bring all of those with me. I brought a couple just in case we need them, all right?

MR. CROSBY: Objection. This was all covered in his questions on videotape. All he has done is identified documents.

THE COURT: That's correct. Well, I think those were already preliminary questions no doubt

leading into something pertinent to the testimony here today. Overruled.

BY MR. VONA:

Q. Mr. Taylor, as you mentioned yesterday, you're here as a corporate representative for Ford, correct?

A. Yes.

Q. You're speaking for Ford today?

A. Yes.

Q. All right. And we already established you're a fact witness, not an expert witness, right?

A. That's correct.

Q. And you have no personal knowledge about anything that happened at Ford before 1988, true?

A. I was not employed at Ford prior to 1988, that is correct.

Q. And you don't have any personal knowledge about FAST machines, correct?

A. I do not.

Q. You never worked on them, never saw one?

A. My knowledge has come through reviewing of the documents.

Q. Okay. And you mentioned yesterday that you're an engineer, is that right?

A. Yes.

Q. Now, despite being an engineer you haven't actually

designed anything since 1992, isn't that fair?

A. I have not been a design engineer since the '90's, that's correct.

Q. In fact, you spend one hundred percent of your time assisting Ford's general counsel office in litigation related matters, true?

A. I do a fair amount in litigation, yes, sir. However, recently my roles have changed and it will be less.

Q. Okay. So you do remember testifying nearly a hundred percent?

A. That was six months ago, yes, or longer, seven.

Q. Giving you a break now?

A. Actually I've been promoted to the manager of the department that I work in. So my roles and responsibility will change.

Q. Congratulations, sir.

A. Thank you.

Q. Do you have Exhibit 3 back, yet, the instruction manual?

MR. VONA: With counsel's permission since I'm not the only one foul, Mr. Crosby took the Exhibit 3 back to the office, we're going to use a copy of Exhibit 3, is that okay?

MR. CROSBY: That's fine.

BY MR. VONA:

Q. This is Exhibit 3. You were looking at this yesterday, correct? It's a Ford instruction manual?

A. Yes.

Q. For the FAST machine?

A. Yes.

Q. Just again, who, according to that document, who designed and conceived it? What does it say?

A. It's kind -- it's an instruction manual for FAST machines.

Q. Let me try it this way. Who wrote the manual?

A. Mr. Anderson and Mr. Heinz.

Q. Those are Ford employees, correct?

A. That is correct.

Q. Now, I would like to direct your attention to figure 3-A in the instruction manual. You see that, sir?

A. I do.

Q. What is that a picture of?

A. This is a -- it's titled a Schematic Diagram of Constant Friction Test.

Q. Can you hold that up for the jury, please?

A. Sure will.

Q. All right. And I'm going to show you from Plaintiff's 35G which is the Hooker Durez report that's in evidence from 1970.

A. Yes.

Q. We talked about it back in December?

A. We did.

Q. And if you remember me showing you this picture as well in the Durez memo?

A. I do.

Q. And if we hold those up, can we not agree these are identical?

A. They appear to be pointing to the same components with the same nomenclature.

Q. Again you don't have personal knowledge as to how this Ford schematic got inside this Durez memo, do you?

A. I do not.

Q. You were asked some questions about Defendant's X -- Plaintiff's 35C, this is the Australian brake lining one.

A. Yes.

Q. If you could turn to Page 4157 -- or, I'm sorry, bates stamp 4157, Page 7. Are you there?

A. Yes, I am.

Q. Where it says FAST procedures. Could you read that first sentence, sir?

A. A complete description of the FAST machine sample and disc preparation and basic testing procedures may be found in the instruction manual for the FAST machine ARM 66-7 April 1, 1966.

Q. Thank you, Mr. Taylor. Now, you remember us

discussing this back in December as well, right? Vaguely probably.

A. I know there's a record of it, yes.

Q. Let me try to ask it this way: Do you recall us discussing the presence of -- first of all, this document talks about the testing of asbestos containing friction materials with the FAST machine?

MR. CROSBY: Objection. May we approach?

THE COURT: Sure.

(Whereupon a bench conference was held).

BY MR. VONA:

Q. All right. Mr. Taylor, sorry for that. You recall testifying for counsel, basically you're just reading documents here, correct?

A. Well, I'm identifying these documents but there were too many objections that they were in Ford's archives.

BY MR. VONA:

Q. Just the one document. I apologize for that. You're reading the document. I'm going to --

A. I'm reading different portions of the documents.

Q. And you just read this for counsel, it's highlighted, the Friction and Wear Characteristics of 11 Australian Ford Brake Linings supplied by Mr. F.P. Hill of your deponent were investigating using Ford's FAST procedures? Have I read that correct, first page?

A. Department. You said deponent.

THE COURT: Show it to the witness.

BY MR. VONA:

Q. The Friction and wear characteristics of 11 Australian Ford Brake Lining supplied by F.P. Hill of your department were investigating using Ford's FAST procedures.

A. You read that correctly.

Q. Okay. Now, turn to Page 9. Actually, I'm sorry, Page 12.

A. 12?

Q. Yeah. And then read that sentence right there starting with visual inspection.

A. Visual inspection of the surface under a microscope reveal the presence of graphite, large brass chips, open fiber asbestos and the general appearance of dry mix process materials.

Q. Thank you. Mr. Taylor, do you recall back in December when you and I met that you told me that Ford did not have any technicians who serviced FAST machines? Do you recall that?

MR. CROSBY: Objection. Getting beyond the scope of the identification of the documents.

THE COURT: He's asking -- I think he's asking the question preliminary to something else. I'm going to listen to it.

THE WITNESS: Yeah. I don't specifically recall that, that testimony.

BY MR. VONA:

Q. Let's take a look at your transcript. And this is your testimony which was played to the jury last Friday I believe.

A. You were off Friday.

Q. You're right. In any event this is the deposition of Mark Taylor December 16th, 2010. I'm going to turn Page 69 and, I'm sorry, it's Page 70 to 71. And the question is here: All right. Let's go down to like the second paragraph where it says note. Second sentence, if a qualified repair technician is not available obtain the services of a local service representative or contact the supplier of the machine. Now, did Ford have or provide any trained technicians to service FAST machines that you know of. Answer, no. Ford would not have had repair technicians for this machine because Ford did not manufacture. I believe there's another manufacturer also Grod, I believe it's graining phonetic and Link to manufacturers of FAST machines today. Did I read that right?

A. You did read that correct.

Q. Does that refresh your recollection?

A. It does.

Q. You did tell me no, correct?

A. I told you, no, Ford did not have a staff of technicians available to repair FAST machines.

Q. I'm going to show you Plaintiff's Exhibit 18 in evidence. I'm going to put it up on the screen for you.

A. Okay.

Q. Now, Plaintiff's Exhbit 18 says, at the request of Brake and Chassis Frame Department we are conducting tests of our vendors FAST machines and are evaluating proficiency of their operators. Two brake suppliers FAST machines have been evaluated. The Bendex Research Machine requires several mechanical adjustments to conform to specifications. The machine and operator performance were judged to be satisfactory and the corrections were made. Sir, you didn't tell me that back in December, did you?

A. No, I didn't.

MR. CROSBY: Objection, Your Honor.

THE COURT: Overruled.

BY MR. VONA:

Q. Did you review this document before your deposition, sir?

A. I had reviewed this. And this is one of the engineers. It's very typical for an engineer at Ford Motor Company to go out and tweak a manufacturer's piece of equipment at their facility to insure that it is operated in the same fashion in which we would anticipate it to.

Q. Once again -- first of all, you weren't around when this document was created. But that is what it says, correct?

A. That's what this document says, yes.

Q. Right. And do you recall also telling me in December that Ford had no communication with Durez concerning FAST machines, do you recall that?

A. I don't recall that.

Q. Okay. Let's take a look at your transcript.

MR. CROSBY: Objection.

MR. VONA: Goes to his creditability and he's a corporate representative.

MR. CROSBY: May we approach.

THE COURT: Yes.

(Whereupon a bench conference was held)

THE COURT: Now we're going to take a brief recess here. The service person's here. We hopefully will restore our sound system. So I'm told it will take about ten minutes. Jurors, you can retire to the deliberation room and everyone else is free to remain here.

(Whereupon a recess was taken)

THE COURT: Bring the jury in.

COURT OFFICER: Jury in.

COURT CLERK: All jury and counsel are

present, Your Honor.

THE COURT: Thank you.

BY MR. VONA:

Q. Mr. Taylor, before we broke we were about to review your testimony from December. I asked you if you recalled telling me back in December that based upon your review you found no information, in evidence, any contact between Ford and Durez concerning FAST? Do you recall that earlier in your testimony?

A. I do not.

Q. You don't recall me asking that question?

A. I don't recall you specifically asking that question.

Q. In December?

A. In December.

Q. Fair. We're on Page 112. It says, based on your review of the documents and in speaking to Ford people, you obtained no information about correspondence between Ford and Durez with respect to FAST and your answer was absolutely not. Correct. Does that refresh your recollection?

A. That's how I answered that question.

Q. Is that true?

A. At the time I believed it was true. I could not find in the documents that I reviewed -- I didn't find any direct correspondence between Ford and Durez.

Q. But the question was whether you had seen any information that talked about Ford speaking to Durez about FAST. That's what the question said.

A. Ford speaking to Durez?

Q. Yes.

A. At that point in time I had not found any, yes.

Q. But you did review Exhibit No. 18, correct, prior to your deposition?

A. It was one of the many documents that I reviewed, yes.

Q. And if you can, turn to the second page, sir. If you can just read this last paragraph, Brake Supplier Vendor Visitations?

A. I'll read it out loud?

Q. Please.

A. You said read. We have informed technical representatives from some chemical, 3M Chemical Division and Hooker Chemical Durez Division about PGC and FAST and their application to quality control programs for brake linings resins and friction particles.

Q. Thank you, Mr. Taylor.

A. Okay.

Q. Now, you didn't tell me back in December though, right?

A. I did not tell you that in December, no. I've --

Q. Sir, are you generally from your testimony as a corporate representative for Ford, are you generally familiar with OSHA and the EPA?

A. I'm generally familiar with how they work at Ford Motor Company, but to say that I'm an expert on that, no, I rely on other individuals.

Q. Sure. And I'm not asking you to be an expert in this. You get deposed a lot, correct?

MR. CROSBY: I'm sorry, is that a question?

MR. VONA: You get deposed a lot as a representative for Ford?

THE WITNESS: That's correct. The last couple of years many, many times.

BY MR. VONA:

Q. And you often get asked questions about OSHA and EPA and organizations like that, isn't that true?

A. I have been asked about them in the past.

Q. Are you aware OSHA and EPA, that they have regulations in place with respect to brake work?

A. Regulations for the employer for the workplace, that's correct.

Q. And basically, OSHA and the EPA have found that working with asbestos brakes can be hazardous, isn't that true?

MR. CROSBY: Objection, Your Honor.

THE WITNESS: I don't --

MR. CROSBY: Objection.

THE COURT: Grounds?

MR. CROSBY: Well, beyond the scope. He's asking for an expert opinion.

THE COURT: I think he's being asked about his own familiarities.

MR. VONA: Yes.

THE COURT: The objection is overruled.

THE WITNESS: I'm aware that OSHA provides special guidelines for the workplace at Ford Motor Company and Ford Motor Company complies to those regulations.

BY MR. VONA:

Q. And that's because asbestos in brakes can be hazard, true?

A. You're asking me for an opinion and I'm not prepared to give any opinions here. I'm here as a fact witness for Ford.

Q. You're here as a corporate representative for Ford?

A. Yes, sir.

Q. So as a corporate representative for Ford you have no answer to that question?

A. I think I truthfully answered your question. That really calls for an opinion. I'm not an epidemiologist.

I'm not a medical doctor. I'm not a toxicologist. I'm an engineer and I generally know that certain types of asbestos and certain, certain dosages might cause disease in certain people. But other than that --

Q. So you know that though, right?

A. I know that, but you know --

Q. But you don't know that working with asbestos in brakes, that OSHA never put a rule out working with brakes is safe, is that fair?

A. Working with brakes is safe.

Q. Has OSHA ever said that to your knowledge?

A. I don't know if they said that or not.

Q. How about the EPA, have they ever said that?

A. I don't know if they said or not.

Q. Is it -- you're here for Ford. Is it Ford's position that working with asbestos containing friction materials is safe?

MR. CROSBY: Objection, Your Honor.

THE COURT: Sustained.

MR. VONA: Fair enough.

BY MR. VONA:

Q. All right. Mr. Taylor, getting towards the end. I want to show you Plaintiff's Exhibit 23 in evidence, and ask you if you recognize that document, sir?

A. I have seen this document.

Q. Like last Saturday, correct? You were at a deposition?

A. All day Saturday.

Q. I know. I heard about it. In any event, sir, you're familiar with that document, correct?

A. I've seen this document. It's dated 2-3-2005, correct.

Q. Right. And it states, it's a Ford Motor Company Material Safety Data Sheet, correct?

A. It's from Ford of Canada, correct. It's from Ford Motor Company, Ford of Canada.

Q. Okay.

A. Oakville.

Q. All right. And it's still from Ford, right?

A. Ford of Canada, yes.

Q. Is there a difference?

A. We have a Ford of Canada and Ford of the U.S. and we have Ford of Britain, South American Ford, yes.

Q. Let me ask you this, sir, it says product asbestos all forms, right?

A. It does say that, yes.

Q. And print date February 23, 2005. Last reviewed October 22nd, 1988, correct?

A. That's correct.

Q. And if you turn the page, you seen this before,

little skull and cross bones where it says toxic?

A. Yes.

Q. What do you take that to mean, sir, toxic?

A. Well, it's -- toxic to me means something you might not want to be around.

Q. In fact it says this material contains an ingredient which is a cancer hazard based on tests with laboratory animals, true?

A. That's what this document states.

Q. Okay. Am I correct the only asbestos that Ford's ever used is chrysotile asbestos, right?

A. That's correct. In our brakes.

Q. So and this document states for all forms of asbestos, right?

A. That's what this document says.

Q. That would include chrysotile, correct?

A. You would anticipate so.

Q. Would you agree that this is still Ford's position that all asbestos fiber types can cause cancer?

A. This is a Material Safety Data Sheet. And I'm not -- I'm not sure if all forms of cancer cause asbestos.

Q. I'm not asking you. I'm asking you as Ford. What is Ford's position on that?

A. I don't know the answer to that.

Q. You're speaking for Ford, aren't you?

A. I don't know.

MR. CROSBY: Objection.

THE WITNESS: I don't know the answer to that.

THE COURT: Sustained.

BY MR. VONA:

Q. Mr. Taylor, once again, which asbestos fibers were used over the years by Ford?

A. Chrysotile.

Q. Never used amosite or crocidolite?

A. Not that I'm aware of, no.

Q. And that was -- chrysotile was in the brakes that Ford put in its cars, correct?

A. That's correct.

Q. Ford never actually manufactured brakes in their plants, correct?

A. Correct.

Q. So they just put them into the cars?

A. Correct. We bought them from outside suppliers.

Q. There's no use of raw chrysotile in any of the Ford plants, is there?

A. No.

Q. Sir, isn't it true that in the early 1970s Ford knew that asbestos in brakes could cause cancer? That -- you testified to that, sir?

A. I believe there's some interrogatories answers that do state that.

Q. How about your testimony? - you've testified to that, isn't that true?

A. I've testified using information that I've gained from the past that certain individuals knew that certain types of asbestos may cause cancer.

Q. Okay. And also true statement that Ford has had employees that have died from mesothelioma in the 1970s, your testimony?

A. I have seen such documents, that's correct.

Q. And they're only using chrysotile in the plants, correct?

A. We were only using --

Q. In fact they weren't even using chrysotile. It's just chrysotile brakes in the Ford plant, true?

A. That's correct. However we don't know what exposure these employees had besides working at Ford Motor Company.

Q. I see. Is it also true that Ford knew in the 1970s that exposure to asbestos could cause mesothelioma?

A. I'm not exactly sure of the first time Ford knew about mesothelioma.

Q. We're going to look at testimony from the Bobby Lee Herring trial, July 19th, 2010. This is testimony from Mark Taylor. See that right there, sir?

A. I do.

Q. And question, the Ford Motor Company in the 1970s had reports of employees that died of mesothelioma, correct. I'm sorry.

A. I answered that one the same way.

Q. There it is. On Page 699 the Ford Motor Company knew in the 1970s exposure to asbestos caused the disease mesothelioma, correct. And your answer, I'm not exactly sure of the time frame, but there could be an approximation, yes. I read that right?

A. You did.

Q. Isn't it also true, sir, in the early 1970s Ford had received reports of brake workers developing mesothelioma?

A. I believe there is a document that we've seen in the Ford collection that -- from Dr. Selikoff of four brake workers in the West allegedly having mesothelioma or having mesothelioma.

Q. Having mesothelioma, right, true?

A. That's correct, yes.

MR. VONA: Thank you, sir. I don't have anything else.

MR. CROSBY: Nothing further, Your Honor. One question. One follow-up.

REDIRECT EXAMINATION

BY MR. CROSBY:

Q. Mr. Taylor, what do you understand Exhibit 23, what's the date on that?

A. It was printed on 2-23-05.

Q. And you were referred --

THE COURT: What exhibit is that?

MR. CROSBY: Exhibit 23, Your Honor.

THE COURT: Okay.

BY MR. CROSBY:

Q. And you were referred to a symbol on the second page, were you?

A. That's correct.

Q. And do you understand that document to be saying that that is a mandatory OSHA statement? In other words OSHA is the one who said that must be given in 2005?

A. This is regulatory information that's required, yes.

Q. And does it cite the OSHA regulation?

A. 40 CFR part 372.

Q. So do you understand that to be nothing more than dissemination of an OSHA regulation?

A. Correct.

MR. CROSBY: Thank you. That's all I have.

RECROSS EXAMINATION

BY MR. VONA:

Q. Last page of that Mr. Taylor, it says right there, health and safety information has been evaluated by the

Occupational Environmental Health Science Department Ford Motor Company. And that's in the United States, right?

A. That one is, yes.

Q. They reviewed this, Ford reviewed this information and put it together?

A. On the bottom of that page it says so, yes.

Q. Okay. And sir, have you been privy to any Dr. Case or Dr. Hardin testimony?

A. I have not.

Q. And do you know they've come in and told this jury that asbestos in brakes can't cause cancer? Did you know that?

A. As I mentioned, I'm not privy to their testimony.

Q. Is this or is this not Ford's position that asbestos in all forms can cause cancer?

MR. CROSBY: Objection, Your Honor, that's been asked and answered twice.

THE COURT: Pardon?

MR. CROSBY: That's been asked and answered twice now.

THE COURT: I'm going to allow it one more time and then we're going to excuse the witness.

THE WITNESS: This is a Material Safety Data Sheet.

BY MR. VONA:

Q. Sir, that was not my question.

A. Oh, come on.

THE COURT: Answer the question.

BY MR. VONA:

Q. Is this Ford's position, yes or no?

A. I don't know the answer to that.

MR. VONA: Nothing further.

THE COURT: All right. Anything else?

MR. CROSBY: Nothing further.

THE COURT: Any juror have a question? Yes, sir. One of the jurors has a question. Please bring it up to me. Thank you.

Counsel.

(Whereupon a bench conference was held).

THE COURT: These are not questions that can be put to this witness due to the difference in the years involved, this period of time. His period is limited and some of these questions I believe refer to earlier dates. This second question has been put to me, has been handed up to me which -- by the way, both of these will be marked as exhibits, the questions. Why would Ford make an owner manual for a piece of equipment that they didn't manufacture. This witness could not answer that question and therefore I'm going to excuse him from the testimony. Give these to the

court reporter and please have them marked. The longer one is the first exhibit; the shorter one is the second exhibit, court exhibits.

There's another legal point that's been brought to my attention that requires that I address a legal issue so I'm going to excuse the jurors for a brief period of time. You can retire to the jury deliberation room.

(Jury excused)

(Whereupon the reporter marked the Note as Court's Exhibit #3)

(Whereupon the reporter marked the Note as Court's Exhibit #4)

THE COURT: All right.

MR. PONTERIO: Your Honor, Michael Ponterio on behalf of the plaintiff. We had the opportunity to depose the nonparty witness, Mr. Greening this morning. The transcript is here. I would request outside the presence of the jury for me to ask him no more than five minutes of questions to establish that he had no personal knowledge whatsoever about the FAST machines in the 1960s. And without personal knowledge, his testimony is no different than the gentleman that we just had. Had no personal knowledge during the critical period of time when this machine was said to

have been made and sold to Durez. No more than five minutes.

MR. CROSBY: I think we should be given an opportunity to make an offer of proof first.

THE COURT: Well, make an offer of proof. Tell me what you expect the witness to testify to.

MR. CROSBY: What I expect the witness to testify, Your Honor, is that he runs a business that manufactures friction testing machines. He works at a company --

THE COURT: FAST machines?

MR. CROSBY: That's one of them. That in the early 1960s he worked for a company by the name of Link which is also in that business. That in 1946 -- 1967 he become aware reading that SAE document that there was such a thing as FAST machines out there which was in direct competition to the General Motors chassis machine which his company was already making. That in early 1970s, 1970, '71, '72 time period his company started to manufacture FAST machines. That before they manufactured it, they received from Arnie Anderson at Ford the blueprints for the FAST machine. Ford gave them to them to make. That several years before -- and he said 1969 or 1970 he was aware that two manufacturers were at that point in time manufacturing

FAST machines. That those manufacturers were Bush B-U-S-H and Link, for whom he had previously been employed.

THE COURT: Let me stop you. I know you're very careful when stating what you expect him to say and suggest to me what you just said is that he would be testifying to what somebody else told him.

MR. CROSBY: No, no. He was personally aware that they were manufacturing.

THE COURT: How would he become aware?

MR. CROSBY: He became aware two different ways. He became aware because they were his direct competitors and he was seeing the machines. He was seeing the machines in the marketplace. He was also aware because he was at a SAE conference where this machine was described.

THE COURT: Are you telling me that he's going to testify that he went to a certain place and he saw machines and he went to numerous places and he saw machines?

MR. CROSBY: Well, I believe he will testify --

THE COURT: You say he's aware suggests to me that information that might have been communicated to him by others.

MR. CROSBY: Well, judge, he will testify that there were only two major manufacturers of brake testing machines. He will testify one is his.

THE COURT: That he knows?

MR. CROSBY: Are and were. He's been in this business for fifty years. One is his company and one is Link. That he knows what Link was doing. They're his direct competitor. He knows of the FAST machine from the 1967 paper that he read in 1967.

THE COURT: Well, he can certainly testify to what his company was doing. But it would seem to me you might need a witness from the other company to say what they were doing. Otherwise, I think there's a problem about hearsay.

MR. CROSBY: He will testify that he looked at a 1973 document that showed the FAST machine with the Bush emblem on them. He compared that to the 1967 document which shows the FAST machine which is the subject of this case that is in Arnie Anderson's paper in 1967 manufactured by Bush and that in 1967 bore a Ford property tag on it. The same property tag appears in 1973. So he will testify that in that document it shows that Bush was in fact manufacturing FAST machines in 1967. He will also testify that in the 1970s he acquired used several Bush FAST machines. The state of

the market was such that he knows personally that Link and Bush were selling them in 1969 and 1970, the year before he started to manufacture them.

THE COURT: All right. So what you're saying is you're offering proof that two other companies were manufacturing FAST machines?

MR. CROSBY: That's correct. Also testify that he's fully familiar with Ford. He has sold to Ford. He has built machines for Ford over the years. That he knows Mr. Anderson who gave him the blueprints.

THE COURT: Tell you what, put him on the stand and we're going to take his testimony outside of the presence of the jury and I may ask him a couple of questions that may perhaps have not been asked of him. Go ahead, call the witness. This will be a preliminary of a witness to determine whether or not he has evidence and should be given in the presence of the jury.

MR. PONTERIO: May I be permitted to ask questions?

THE COURT: I will ask questions first and we'll see where we go.

COURT OFFICER: Place your left hand on the Bible, raise your right hand, listen to the words of the court clerk.

CHARLES GREENING, after having been first duly sworn, was examined and testified as follows:

COURT CLERK: Thank you. Please be seated. Please state and spell your name for the record.

THE WITNESS: Charles Greening. C-h-a-r-l-e-s G-r-e-e-n-i-n-g

COURT CLERK: Business address, please.

THE WITNESS: 19061 San Diego Boulevard, Lathrup Village, Michigan.

COURT CLERK: Thank you.

THE COURT: You can start.

MR. CROSBY: Thank you, Your Honor. For purposes of this hearing I'm going to skip over a lot of background information if that's all right.

THE COURT: Yes, sure. Get right to the point.

PRELIMINARY QUESTIONS

BY MR. CROSBY:

Q. Mr. Greening, when did you start your manufacturing business?

A. In 1964.

Q. And what is the nature of that business from the time you started up until the present time?

A. The manufacture of special test equipment particularly related to friction materials.

Q. And in the period of 19 -- let's say 1966 to 1973, can you tell me in the United States how many specialty manufacturing companies there were for friction equipment?

A. Just two that I know of.

Q. And have you spent your entire career in that field?

A. Yes.

Q. And what were the two that were in business manufacturing specialty equipment?

A. During those years.

Q. Yes.

A. Link Engineering and ourselves, Greening Associates.

Q. Sir, did there come a point in time that your company began to manufacture what is called a FAST machine?

A. In '70s.

Q. And where did you obtain -- strike that. When did you first learn about the FAST machine?

A. Probably late '60s, or '70s.

Q. And how did you learn about it in the first instance?

A. Well, there was an SAE paper by Arnold Anderson, pardon me, Arnie Anderson and he gave a paper to the SAE convention.

Q. And did you obtain it at that time?

A. Shortly thereafter.

Q. And if I were to show you the paper that is in evidence, could you tell me --

THE COURT: As exhibit what?

MR. CROSBY: It is 35C.

THE COURT: It has a sticker on it, doesn't it?

MR. VONA: No, not that one, judge.

THE COURT: Let's use the one that has the sticker on it.

MR. CROSBY: Your Honor, we're looking -- I think we can agree it's 35C for purposes of this. If we can just use a copy. But I think we all agree.

THE COURT: Okay, use the copy.

MR. CROSBY: Is that the paper you're referring to?

THE COURT: 35C.

THE WITNESS: This is the test report -- this is a test report -- the one you're referring to, 35C?

BY MR. CROSBY:

Q. Yes.

A. Yes.

Q. Is that the SAE you're referring to?

A. Yes.

Q. That's dated what year, can you tell?

A. I don't see a date on the front of it.

MR. CROSBY: Mark that, please.

THE COURT: Does it have a date on it?

THE WITNESS: Not so far.

THE COURT: Counsel.

MR. CROSBY: Another copy does which I'm marking.

(Whereupon the reporter marked the SAE Report as Defendant's Exhibit C1 for identification.)

THE COURT: Will you show it to counsel and maybe we can agree that that's the exhibit that's in evidence.

MR. CROSBY: We can agree that this was published January 9th to 13th, 2007.

THE COURT: January 2007?

MR. CROSBY: I'm sorry, January, 1967.

THE COURT: All right.

BY MR. CROSBY:

Q. Following the publication of that paper, did you learn whether anyone was manufacturing FAST machines in the period 1967 to 1970?

A. Yes, I believe the Bush Manufacturing was and as well as Link Engineering Company.

Q. And if we go back to the paper that is -- we were previously referring to, 35 -- here it is, 35D, does that show --

THE COURT: That's D?

MR. CROSBY: D. We found the actual one.

BY MR. CROSBY:

Q. Does that show a photograph of the FAST machine that's referred to in that paper?

A. Yes. Yes, it does.

Q. And, sir, let me show you what was marked this morning as Exhibit 2 at your deposition.

THE COURT: Mark it with a court exhibit.

MR. PONTERIO: Judge -- may I show you a copy of this.

MR. CROSBY: Sure.

(Whereupon the reporter marked the Copy of Photograph as Defendant's Exhibit D1 for identification.)

BY MR. CROSBY:

Q. Exhibit D1 and ask if you recognize what that is?

A. This is a FAST machine.

Q. And when you look at that photograph, sir, or that copy of a photograph, were you able to determine who the manufacturer of that machine was?

A. Yes, I recognize the name plate showing USH Manufacturing Company.

Q. And are you familiar with that name plate?

A. That's the Bush name plate. Bush Manufacturing.

Q. And that's the name plate of the manufacturer on that

machine, is that correct?

A. Yes.

Q. And to the left of it, that name plate, sir, is there another plate?

A. There's a Ford Motor Company brass tag, capital property tag.

Q. Are you familiar with the Ford Motor Company brass tags for capital property?

A. Yes, I am.

Q. How are you familiar with those?

A. We've built other machines for the Ford Motor Company. We make an SAE No. 2 machine and we sold several to them.

Q. And the brass tag property, is that for machines that are on their property?

A. Yes.

Q. Did you compare this photograph, Exhibit 2, with the photograph that is part of Exhibit 35D from 1967?

THE COURT: What is that exhibit now?

MR. CROSBY: 35D.

THE WITNESS: Looks to be the same.

BY MR. CROSBY:

Q. And were you able to compare, for example, the numbers on the Ford property tag when you looked at that in our office?

A. I can see the numbers on -- on the Exhibit 2. It's difficult on this copy for me to see them.

Q. Did you last evening utilize a magnifying glass?

A. Yes. They looked to be the same.

Q. So, sir, based upon that document, did you determine shortly after obtaining it in 1967 who was manufacturing these FAST machines?

A. Well, certainly the Bush Manufacturing was making them.

Q. And sir, have you seen FAST machines in plants that were manufactured by Bush?

A. Yes.

Q. Have you seen machines in plants that were manufactured by Link?

A. Yes.

Q. And when is it that you understand that they were -- that you were aware that they were manufacturing these?

A. It would have been in probably the early '70s.

Q. When you say early, did you testify this morning it might have been '70 or '69?

A. I could have said that, yes.

Q. Now, who was Bush, Mr. Bush?

A. Mr. Bush was -- my understanding was the owner of the Bush Manufacturing Company. He was the -- his son-in-law was Arnie Anderson.

Q. And Arnie Anderson was the individual who designed these machines?

A. Yes.

Q. Now, sir --

THE COURT: What was the relationship?

THE WITNESS: Arnie Anderson was married to Mr. Bush's daughter.

BY MR. CROSBY:

Q. And do you know whether in the late 1960s, Mr. Anderson was also consulting with Link?

A. It appeared so.

Q. Why do you say that?

A. Link Engineering started to manufacture those machines before we understood that they were -- that the prints were available.

Q. And when was it that Link to the best of your knowledge, Link was manufacturing them?

A. Would have been in the late '60s.

Q. And sir, from the time you first became aware that Link was manufacturing them and you became aware Bush was manufacturing them right through the 1970s, who are you aware of as manufacturers of FAST machines?

A. I think later '70s it was only Link Engineering company.

Q. And when did your -- did your company sell them as

well, manufacture and sell them?

A. It took a couple of years to, to get it to work properly.

Q. And then you sold them as well?

A. Yes.

Q. Sir, you also -- does Greening also have a service division?

A. We have service personnel.

Q. And what do they do?

A. They service friction materials, test machines wherever they are.

Q. In suppliers' factories for example?

A. Yes, certainly.

Q. And do you go to the factories as well?

A. I have.

Q. And when you went to the factories in late '60s, early '70s, did you see any FAST machines?

A. Yes.

Q. And who were the manufacturers or manufactures plates that you recognized?

A. They were mostly Link. Some Bush, but mostly Link.

Q. You say some Bush, mostly Link. Did there ever come a point in time that you acquired, used, any of these machines?

A. We acquired both Link and Bush machines to update

them with our control arm.

Q. Now, is the friction test machine manufacturing community a small community of manufacturers?

A. I would say so.

Q. Are you aware at any time from 1964 to the present of ever seeing a FAST machine that had an identification on it that it was manufactured by Ford?

A. No.

Q. Are you aware of any customer ever saying that they purchased such a machine, a FAST machine from Ford?

A. No.

Q. Are you aware of Ford ever manufacturing such a machine?

A. No.

Q. You indicated that your experience with Ford part was with the SAE 2 machine?

A. Yes.

Q. And that's a transmission machine, is it?

A. Transmission clutch plates.

Q. And where did you get the prints to make that?

A. The test had prints and patterns were given to our firm by George Smith from the General Motors research laboratory and both Bill Loss from Ford Motor Company and George Smith from the research General Motors co-cooperated. Let's say cooperated with one another to have someone build

this machine for those people who chose not to build it themselves.

Q. Was that a machine that was designed by Ford and GM cooperatively?

A. Yes.

Q. And after they designed the machine, are you aware of them ever building the machine?

A. No. I'm not aware of that.

Q. Did your company build the machine?

A. Our company did.

Q. And did they then purchase from your company?

A. Yes.

Q. Are you aware of Ford Motor Company ever building any friction testing machines?

A. Not to my knowledge.

MR. CROSBY: Thank you.

MR. PONTERIO: May I question?

THE COURT: Yes.

PRELIMINARY QUESTIONS

BY MR. PONTERIO:

Q. Good afternoon, Mr. Greening, we met this morning. Welcome to Buffalo. My name is Michael Ponterio.

THE COURT: This afternoon.

MR. PONTERIO: We've been working pretty late. I'm just going to mark your deposition that you

gave this morning and I just have seven questions for you.

THE WITNESS: Fine.

MR. PONTERIO: Same questions that were asked of you this morning.

THE WITNESS: All right.

(Whereupon the reporter marked the Transcript as Plaintiff's Exhibit #82 for identification.)

BY MR. PONTERIO:

Q. Mr. Greening, I'm just going to put the transcript right here. Do you remember telling us this morning --

THE COURT: What is that exhibit?

MR. PONTERIO: It is Plaintiff's Exhibit 82.

THE COURT: Thank you.

BY MR. PONTERIO:

Q. Do you remember telling us this morning that you have no personal knowledge who was selling FAST machines in the late 1960s?

A. No personal knowledge other than Link and --

Q. The question was, you have no personal knowledge who was selling FAST machines in the late 1960s, correct?

A. Well, if who is all inclusive of everybody in the world, I wouldn't know that, would I?

Q. And you told us, also told us that with respect to

your company the first time you sold a FAST machine was in the early 1970s, correct?

A. Yes.

Q. And with respect to the competitor Bush, you told us this morning that you have no personal knowledge that Bush actually manufactured FAST machines. Didn't you tell us that this morning?

A. That's correct.

Q. And with respect to Link, you also told us that you don't know specifically when Link started selling FAST machines, correct?

A. I wouldn't know that, that's correct.

Q. In fact, you told us this morning that you never came across FAST machines in the late 1960s, is that correct? Do you remember telling us?

A. Well, well, not necessarily. I don't exactly -- say that again, please.

Q. I'll be glad to refresh your memory.

A. Please.

Q. That you told us in fact, you weren't coming across FAST machines in the late 1960s. You remember that? And your answer was that's correct.

A. That's a reasonable statement, but you were not -- in the late 1960s you're inferring that -- I'm going to remember the late 1960s versus 1970 as an example. So I

have to agree with you.

Q. I know it's fifty years ago, but that's what you told us this morning, correct?

A. All right.

Q. In fact, you have no personal knowledge at all who sold Durez a FAST machine in the late 1960s, correct?

A. That's true.

Q. And you were shown this picture by Mr. Crosby and isn't it a fact that you told us this morning that you have based on your quote, best guess, close quote, you think that that indicates it was Bush. Isn't that what you told us this morning?

A. Yes.

MR. PONTERIO: Your Honor, based on this testimony, the instruction manual, the Ford instruction manual in evidence as Plaintiff's Exhibit 3 is dated 1966. The Durez memo on the FAST machine Plaintiff's Exhibit 35G reflects that they obtained the machine prior to 1970. This gentleman has no personal knowledge in the 1960s who manufactured FAST machines, when Bush started manufacturing FAST machines, when Link first started manufacturing FAST machines. In fact he told us that this picture, and God bless him if he can identify it, but he said looking at that picture it was his best guess. Judge, best guess just isn't

good enough. This gentleman, he has personal knowledge in the late '70s, '80s, '90s, but the technology has changed. This is about the '60s times frame. He's conceded -- you got the transcript that's part of the record -- no personal knowledge. And for that we would like to seek he be excluded because it's all guesstimates. I'll give you the transcript. I highlighted every time he had no personal knowledge.

THE COURT: I think it would be wise to mark the transcript of the deposition as an exhibit.

MR. PONTERIO: I did. It's 82. Plaintiff's 82.

THE COURT: All right. I see that.

MR. CROSBY: May I, Your Honor?

THE COURT: Yes.

PRELIMINARY QUESTIONS

BY MR. CROSBY:

Q. Mr. Greening, were you asked by plaintiff's counsel this morning at Page 65 Line 3, do you have any personal knowledge, you yourself of any companies that actually sold FAST machines in the late 1960s. And did you answer, Link Engineering COMPANY would have done that. Question, in the '60s. Answer, it would have been in late 1960 I would think. What is your understanding. I'm sorry. Going back two pages.

A. What page, please?

Q. Page 67 now. Let's go back to 66 and start there. Line 15. Question, well, in 1967, Arnie Anderson wrote a paper. Answer, okay, he wrote the paper. Question, so clearly they knew how to make one in 1967. Answer, that's right. He, Arnie Anderson, was pushing that in competition with the chassis machine. Question, sure, which we were making. Sure. And do you recall -- strike. Was Link Manufacturing, did they start selling the FAST machines arm the same time that you did. No. Before we did. How long before you guys did. Several years. Later on were you asked at Page 68, any other companies in the late 1960s that you have personal knowledge was selling FAST machines. Answer, no, I don't. All right. I interjected. Other than who. This was referring to Link. Other than the original Bush and then Link. Is that your testimony?

A. Yes.

MR. CROSBY: Thank you.

MR. PONTERIO: Your Honor, I'm not going to repeat what this witness told us in his sworn testimony. He has no personal knowledge, none whatsoever. To let him testify in front of a jury even subject to cross-examination with prejudice far outweighs any probative value. He never worked for Ford. He testified as a matter of fact he never saw a

FAST machine in the late 1960s. He has no personal knowledge and he's agreed with every statement that I asked him on cross-examination which is now part of the record as Plaintiff's Exhibit 82.

MR. CROSBY: Your Honor, we disagree. We believe that he does have personal knowledge. He's testified to that knowledge. It's subject to cross-examination and the jury can give it whatever weight they want to it. It is very relevant from an individual who is in that business at the time that we're talking about, shortly after the machine was invented as to who was manufacturing them and the fact that at least to his knowledge Ford was not. Those are all issues in this lawsuit and they're all issues that he has personal knowledge about. And fortunately fifty years later he's able to be here to testify.

THE COURT: Tell me something. It's very important for both sides of this case to try to pin down the date when the FAST machine was being manufactured. Now you testified to that?

THE WITNESS: Yes.

THE COURT: You're saying your company was not directly involved with that in the late '60s?

THE WITNESS: Yes.

THE COURT: Did you ever sell them in the

'70s?

THE WITNESS: Yes.

THE COURT: When did you start selling them in the '70s?

THE WITNESS: Your Honor, without being able to go back and look at records, it would have been the early '70s. Our plant was moved from its first location to a second location in the summer of 1970. And --

THE COURT: Well, let me ask you this: At your old location were you involved with FAST machines?

THE WITNESS: That is something I can't say yes or no. I'm not sure.

THE COURT: Okay. But you are when you moved?

THE WITNESS: Yes, sir.

THE COURT: When you moved you're certain today at the new location you were involved with FAST machines?

THE WITNESS: Absolutely. That's our only location since that time.

THE COURT: Did you ever sell one to Ford?

THE WITNESS: No, sir.

THE COURT: And you did testify earlier that you thought some other firm had -- that some other

firm, one of your competitors had sold the FAST machine to Ford?

THE WITNESS: To Ford, I don't know that.

THE COURT: You don't know that? Did you ever see one at Ford?

THE WITNESS: I believe so.

THE COURT: Well, wait a minute.

THE WITNESS: When I say I believe so, that would have been years later.

THE COURT: How many years later?

THE WITNESS: Five or six years later.

THE COURT: So it would be in the mid '70s?

THE WITNESS: Yes.

THE COURT: And that would be the earliest date that you saw one there?

THE WITNESS: That wouldn't be my interest particularly. I mean --

THE COURT: What do you mean by that?

THE WITNESS: Well, I wouldn't be visiting the Ford Motor Company specifically to see a FAST machine which were already producing and were already modified.

THE COURT: You were?

THE WITNESS: Yes, we.

THE COURT: As well as the other company that

you mentioned?

THE WITNESS: Yes.

THE COURT: But do you have a specific recollection of seeing a FAST machine at Ford?

THE WITNESS: Specifically, not -- no.

THE COURT: At any time?

THE WITNESS: I assume -- I'm sure that I did.

THE COURT: No. Listen --

THE WITNESS: I can't tell you, sir.

THE COURT: I want you to tell me whether you're certain today.

THE WITNESS: I need a remembrance specifically of -- I would say no.

THE COURT: You never saw one at Ford? I'm not clear on what you mean by no.

You never saw one at Ford or you're not certain? Explain.

THE WITNESS: I with say I'm not certain.

THE COURT: That you ever saw one at Ford?

THE WITNESS: I was there a number of times and I've seen the FAST machine so many times and I've seen the Link FAST machine. I've seen the Bush FAST machine in my shop. We've modified them. I've also seen them at other customers places. So over the years

I can't tell you specifically whether I saw at the Scientific Research Laboratory of Arnie Anderson.

THE COURT: Well, I'm asking you not about Anderson's place. I'm asking you about Ford.

THE WITNESS: That's the place, Ford.

THE COURT: Oh, that -- Anderson worked for Ford?

THE WITNESS: Anderson worked for Ford.

THE COURT: I see.

THE WITNESS: I -- he worked in the scientific and research laboratory.

THE COURT: We all know that the scientific laboratories is mentioned on the manual if you recall that that's associated with this machine. So you're not certain, is that it?

THE WITNESS: It's going to have to be my answer.

THE COURT: Pardon?

THE WITNESS: Yes, sir.

THE COURT: Thank you. Unless there's further questions, the witness is excused. Thank you, sir, for being here.

MR. CROSBY: We would ask for an exception, Your Honor.

THE COURT: Yes. I'll take that matter up

later on the record.

MR. PONTERIO: They were going to show us some documents so we can avoid yesterday's objections. We'll look at the documents and then what we can agree upon.

THE COURT: On the record. Given the witness's responses to my questions, I don't believe, and this is no criticism to him or of counsel for having produced him, that is he able with certainty to remember when and -- when and where he saw a FAST machine. All right. Continue. Bring the jury in.

MR. PONTERIO: Judge, they just have some documents to introduce. We're going to take five minutes and look at them.

THE COURT: You want to do that before? Tell the jury it will be another few minutes and we'll be calling them back.

MR. BRIDGE: That was our last live witness, Your Honor.

THE COURT: You had indicated before that would be your last witness. So we'll just clean up the documents and then we can close the evidence I assume.

MR. CROSBY: Yes, Your Honor.

(Whereupon a recess was taken).

(Whereupon the reporter marked the

Draft of 2-27-78 as Defendant's Exhibit E1 for identification.)

(Whereupon the reporter marked the Asbestos Monitoring Program Report as Defendant's Exhibit F1 for identification.)

(Whereupon the reporter marked the Raw Materials Purchase Record as Defendant's Exhibits G1 through O1 for identification.)

(Whereupon the reporter marked the Answers to Interrogatories as Defendant's Exhibit P1 for identification.)

THE COURT: What exhibit?

MR. BRIDGE: P1.

MR. VONA: No objection.

MR. BRIDGE: Judge, there are Raw Materials Purchase Records, Raw Material Purchase Records that were subpoenaed from Durez, Occidental and there are two groups, to save time, G1 and then I've marked, I pulled out of G1 eight particular purchase records of which have dates which represents the time period that Mr. Ginter was there. The entire G1 has dates that obviously predate in some part his work there. We would offer all of them. As we understand it, judge, there would be only an objection to relevancy because we previously talked to counsel regarding the

authentication of the records. But we still feel that the prior dates show the pattern practice of his employer to use asbestos which is part of the claim and is relevant in this case because when we got there they were using asbestos in full bloom. So they were using in their production on a regular basis.

MR. PONTERIO: When?

MR. VONA: When, in '76.

MR. BRIDGE: Yes.

MR. VONA: Not '79?

MR. BRIDGE: No. I mean earlier.

MR. VONA: '68, go ahead.

MR. BRIDGE: Again, it shows what Durez was doing and using at the time. So we feel that they are relevant at least in terms of the weight of the evidence, but not in terms of admissibility. So we would offer all of G1. If the Court is not inclined we with offer the respective dates that we feel have applicable time frames.

THE COURT: Well, how far back do they go?

MR. BRIDGE: Some go into the late '60s. Some go back -- this one goes back to '64, judge. '68, '68 and then it says '70. So it's basically mostly into the very late -- late '60s and early '70s which would be the time frame just prior to his arrival in

'76.

THE COURT: Whose arrival?

MR. BRIDGE: Mr. Ginter's employment that he started in '77.

THE COURT: So what's --

MR. VONA: Judge, obviously this whole group here on its face I object on relevance in that the plaintiff did not start working for Occidental and did not start going to the Durez plant until 1976. I've offered as a compromise to counsel with respect to the ones they pulled individually that do have relevant time frames because '76 and '79 or '80 --

THE COURT: This is for what type -- those are purchase records?

MR. VONA: Those are Durez purchase orders for asbestos.

THE COURT: It would be reasonable to assume they would buy and supply, that would be for a month or two or years. I don't know the quantities.

MR. VONA: Sure, I understand.

THE COURT: Some things purchased let's say in the late '60s might very well still have been there.

MR. VONA: Well, I don't --

THE COURT: I don't know.

MR. VONA: Exactly, judge, we don't know.

THE COURT: Why don't the two of you agree upon a period of time.

MR. VONA: That was my compromise, judge. I said to Mr. Bridge I'd be happy to agree to these that they pulled out which have relevant time frames as long as the earlier dates were redacted.

THE COURT: That package in your hand begins when?

MR. VONA: It depends which one you look at. This one starts in '75 which goes through which -- anything '76 and later I say it's relevant.

MR. BRIDGE: Because he's trying redact the one that I pulled out that have relevant dates because portions of them --

MR. VONA: No, I'm not saying you can't show them. I'm saying --

MR. BRIDGE: No, no, you want to redact this document.

MR. VONA: Yeah, I want to redact anything prior to '76 prior to when the plaintiff was actually there.

THE COURT: Well, I mean --

MR. VONA: It's a fair compromise.

THE COURT: How often did they buy this stuff?

MR. VONA: On a regular basis.

THE COURT: What's regular, every six months?

MR. VONA: Depends which one. Sometimes they're buying it every couple of months. 1975, May. October, I'm sorry, March 1st, March 12, March 26, April 2nd. There's a high turnover on some of this, and to put these in from the late '60s is just not relevant to this case, judge. It doesn't matter what Durez was doing in the '60s. Mr. Ginter wasn't there until '76. They're trying to go towards apportionment which I understand, which it's plaintiff's position, judge, that the relevant time frame would be '76 to '79 and I don't dispute --

THE COURT: Off the record.

(Whereupon a discussion off the record was held.)

(Whereupon the reporter marked the Friction Materials Report as Defendant's Exhibit Q1 for identification.)

MR. BRIDGE: E1.

THE COURT: Okay. General summary is?

MR. BRIDGE: A memo regarding asbestos exposure.

THE COURT: What company?

MR. BRIDGE: Durez.

THE COURT: Dated?

MR. BRIDGE: February 27, 1978. Just briefly we offered Exhibit E1 into evidence as far as it being relevant to the notice that Durez would have given to employees regarding asbestos exposure. It's my understanding that the Court has --

THE COURT: Plaintiff's position will be articulated on the record.

MR. VONA: Absolutely, judge. It's --

MR. BRIDGE: Let me just finish.

MR. VONA: Go ahead.

MR. BRIDGE: First of all, plaintiff, we've subpoenaed documents to the Court. We have an agreement with counsel that the authentication will not be raised as an objection but a relevancy objection is being raised. We feel it is certainly relevant because it deals with asbestos exposure regarding employees and notice that would have been going to respective employees in the environment that occurred at the employment where Mr. Ginter worked regarding notice to employees of asbestos and the concerns that Durez had.

MR. VONA: Keith Vona on behalf of the plaintiff. With respect to Defendant's Exhibit E1 we note objections to relevance and also that it be highly prejudicial in that this document is dated February

27th, 1978, at least or actually more than one year prior to the plaintiff's employment at Durez Plastics. It is a memo sent to all employees concerning asbestos exposure. There is no evidence in the record that the plaintiff ever received this document nor would he have since he had not even been at the place of employment until over a year later. On those grounds we object to relevance and also in the prejudicial nature that this document -- it would be interpreted that the plaintiff would have somehow received this document at a later date.

MR. BRIDGE: Judge, we'd note that the date, the 1978 date would cover certainly Mr. Ginter's employment at Durez where he started in 1976. It would have covered that time period where he indicated he had worked at Durez from '76 to the early '80s and it certainly shows the time frame that he would have been, certainly would have been on notice of the asbestos conditions at that plant.

THE COURT: How do we know whether or not he received a copy of that? We don't have any general practice testimony, do we, about the distribution of that, whether it was given to all employees?

MR. BRIDGE: No. Other than it says all employees and that it's stated within a time frame.

Certainly may be go to weight, judge. I don't know as far as admissibility. It's a relevancy issue that we're arguing.

MR. VONA: It's addressed to all employees of Durez. Mr. Ginter was not an employee until 1979. He was an employee of Occidental Hooker in Grand Island.

MR. BRIDGE: It does say Hooker Chemical Corporation acquired the services of a private consultant to examine the plant environment and make recommendations concerning the working conditions.

THE COURT: All right. You got it on the record. What's the next one?

MR. BRIDGE: F1. It's a Hooker Chemical Durez Division document dated October 24th, 1975 entitled Asbestos Monitoring Program. We feel this document is also extremely relevant as to not only the notice and condition of what was going on at the Durez facility, it talks about background and the implementation of the Asbestos Monitoring Program at the plant. We feel it is relevant. Mr. Ginter had testified that he was involved in an Asbestos Monitoring Program. So not only was he involved in a particular Asbestos Monitoring Program with his employment at Durez, it also shows Durez's notice of the conditions and concerns that they would have had

concerning the working environment. It also refers that OSHA was intent on addressing the asbestos concerns at the particular facility.

MR. VONA: Keith Vona on behalf of the plaintiff. Once again, we object to this document on the basis of relevance. It's also highly prejudicial to the plaintiff in that this document again is a Hooker Durez document created in October of 1975, a good four years prior to Mr. Ginter's arrival at Durez Plastics. There is evidence in the record that he did testify that he was involved in a -- an Asbestos Monitoring Program some time in the 1980s. There is no evidence in the record that he was involved with this monitoring program that's depicted in Exhibit F1. And as I stated, it predates him by four years and thus is irrelevant and highly prejudicial.

THE COURT: All right. Same ruling. What's next?

(Whereupon Exhibits I1, J1, K1, L1, N1, O1 and Q1 were entered in evidence)

Are we going to have any more evidence today?

MR. BRIDGE: Judge, I would just like a brief opportunity to publish.

THE COURT: I would like to get the jurors in here. Are you ready to go?

(Whereupon the reporter marked the Responses to Plaintiff's Interrogatories as Defendant's Exhibits R1 through T1 for identification.)

THE COURT: Bring the jury in.

(Jury present)

COURT CLERK: Sorry to keep you waiting, members of the jury, but we were having to make a number of legal rulings that had nothing to do with your part of the case in which you are the fact finders. There were legal issues and they were very, very complicated and while we thought we could get them wrapped up in a few minutes, as usual it took a lot longer, so we certainly appreciate your patience. Counsel.

MR. BRIDGE: Judge, one of the items that we took care of outside the presence of the jury was some of the documents that have now been admitted and I would like to just publish them briefly to the jury.

THE COURT: Yes.

What document is this that's up on the screen?

MR. BRIDGE: This is Defendant's Exhibit I1, judge, a Raw Material Purchase Record from Hedman Mines covering a period of April, 1974 through March of 1976

showing material description of the Hedman cationic fiber. This is L1, a Raw Material Purchase Record from Durez regarding regular crocidolite asbestos from Continental Corp covering a period of 1976 through -- well, the date was cut off, but it looks like early 1978, Your Honor. K1, a Raw Material Purchase Record from Durez regarding 7T F1 asbestos, vender Johns Manville products covering a period of October '75 through January, 1977. Defendant's Exhibit H1 Raw Material Purchase Record from Durez regarding N7987TS asbestos from Asbestos Corp covering a period of May, 1975 through what appears to be March of 1978 and December, 1978. Actually has 12-18 on it but we assume that it is what it is. This is Defendant's Exhibit O1 Raw Material Purchase Record, 7TFI asbestos from Vermont Asbestos Group covering a period September, 1975 through March of 1976. Possibly August. Defendant's Exhibit J1, Raw Material Purchase Record from Durez referencing Hedman cationic fiber from the Hedman Mines covering a period of 1976 through July of 1979, referencing in the upper right-hand corner 62 tons. The next one and the final one, judge, that I have is Defendant's Exhibit N1 Raw Material Purchase Record from Durez Plastics, 7K15 asbestos shorts, vendor Canadian Johns Manville Co, Limited covering a

period of 1975 through some time in 1978.

Judge, that's all-- may we approach, Your Honor?

THE COURT: Yes.

(Whereupon a bench conference was held)

THE COURT: Well, there's a question from a juror, what is the purpose of showing us all the documents just supplied. Well, members of the jury, I can't answer that question for you, but what will happen here is that after all of the proof is closed, lawyers will be able to address you and discuss the evidence with you and I would expect that they will explain to you what the relevance is of all of these documents that have been marked as exhibits and explain to you what they believe the documents prove and so it's -- I understand it's kind of difficult to understand the technical progress we go through for determining what can be admitted in evidence and what can't. But at the end when you hear the summations, you will hear the lawyers take that whole package of information and start to weave it together and explain to you logically how it applies to this case. So be patient because that's going to happen tomorrow. We're winding up the case in terms of proof. I'm going to ask counsel now whether there's any further evidence to

be submitted?

MR. BRIDGE: Judge, we would just like to publish brief sections of the interrogatories from some of the other entities.

THE COURT: I'm going to give you seven minutes, so start reading.

(Whereupon the reporter marked the Jury Note as Court's Exhibit #5)

MR. BRIDGE: This is interrogatory Reichhold, Inc.'s Response to Plaintiff's First Set of Liability Interrogatories and Request For Production of Documents. Question nine, have you or any of your predecessors or subsidiaries ever mined, processed refined, sold or distributed asbestos or asbestos containing products. If so, for each product complete an asbestos product information sheet. Answer Reichhold -- throughout its over 80 year history the majority of products manufactured by Reichhold did not contain any asbestos. Reichhold manufactured molding compounds in its former Carteret, New Jersey facility starting in approximately 1964 or 1965 and continuing until June of 1986. Reichhold's molding compounds initially contained chrysotile asbestos and was supplied by H.M. Royal, Johns Manville and Union

Carbide. Reichhold began phasing out the use of asbestos in molding compounds in 1974. It completed the phase out in or about the end of 1980 or early 1981. Reichhold manufactured two types of molding compounds, phenolic and polyester.

Interrogatories from Asbestos Corporation. Question nine, have you or any of your predecessors or subsidiaries ever mined, manufactured, designed, supplied, processed, refined, sold and/or distributed asbestos or asbestos containing products. Answer, Asbestos Corporation Limited is engaged only in the mining and milling of raw asbestos fiber. It does not manufacture, design, supply or process, refine, sell or distribute asbestos containing products.

Georgia-Pacific Interrogatories, Interrogatory number nine, same question: Have you or any of your predecessors or subsidiaries ever mined, manufactured, designed, supplied, processed, refined, sold or distributed asbestos or asbestos containing products. Answer, Georgia Pacific subject to them, without waiving its objection states: Neither it nor Bestwall was ever in the business of mining or refining, processing or distributing raw asbestos fibers. By way of further response, Georgia Pacific states that either Bestwall or Georgia-Pacific or both

manufactured and distributed asbestos -- the following products which contained asbestos as a constituent ingredient: All Purpose Joint Compound. Georgia-Pacific first placed All Purpose Joint Compound on the market for national distribution in 1967. Prior to that time All Purpose Joint Compound may have been available for sale in limited areas. Georgia-Pacific first introduced asbestos-free All Purpose joint compound in 1973. Georgia-Pacific continues to sell non-asbestos free All Purpose Joint Compound. The compound is a dry white or off-white powder used in wallboard construction to finish walls and ceilings. The product is packaged in bags. Georgia-Pacific asbestos containing All Purpose Joint Compound contained zero to seven percent chrysotile asbestos.

Bedding Compound. Bestwall first sold Bedding Compound in 1956. Georgia-Pacific continued to manufacture Bedding Compound after it acquired Bestwall in 1965. The last year that asbestos containing Bedding Compound was sold by Georgia-Pacific was in approximately 1977.

Central Mix: The first year Georgia-Pacific sold Central Mix was 1970. The last year that Georgia-Pacific sold Central Mix was 1973. It was a dry white or off-white powder used in wallboard

construction to finish dry walls and ceilings. Central Mix contained three to seven percent chrysotile asbestos.

Drywall Adhesive. Georgia-Pacific sold Drywall Adhesive in 1972. The product came in the form of a paste and was designed to attach to wallboard and wood studs. Drywall Adhesive contained point eight percent chrysotile asbestos.

Joint Compound: Bestwall first sold a product with the name brand Joint Compound in 1956, and Georgia-Pacific continued to manufacture Joint Compound after it acquired Bestwall in 1965. The last year that Georgia-Pacific sold a product with a brand name compound was approximately 1971. Asbestos containing Joint Compound contains zero to six percent chrysotile asbestos.

Kalite: Bestwall sold Kalite from 1956 to 1959. Kalite contained approximately zero to two point six percent chrysotile asbestos.

Laminating Compound Ready Mix. Georgia-Pacific sold laminating Compound Ready Mix in 1969. The product came in paste form and was used to laminate wallboard. Georgia-Pacific Ready Mix contained zero to four percent chrysotile asbestos.

Lite Acoustic: Bestwall sold Lite Acoustic

between 1958 and 1964. Lite Acoustic contained 25 to 29.09 chrysotile asbestos.

Patching Plaster: Bestwall sold Patching Plaster in 1956. Asbestos containing Patching Plaster contained zero to two percent chrysotile asbestos.

Ready Mix: Ready Mix was first sold by Bestwall in 1963 and Georgia-Pacific continued to manufacture Ready Mix after it acquired Bestwall in 1965. Georgia-Pacific introduced asbestos-free Ready Mix in 1974. Ready Mix packages include boxes, buckets or pails. Asbestos containing Ready Mix contains zero to 4.6 percent chrysotile asbestos.

Spackling Compound: Bestwall began selling Spackling Compound in 1956. Georgia-Pacific continued to manufacture Spackling Compound after it acquired Bestwall in 1965 until 1970 or 1971. Spackling Compound contained five point five percent chrysotile asbestos.

Speed Set/One Day: Speed Set/One Day is packaged in bags. Asbestos containing Speed Set contained zero to 6.75 chrysotile asbestos. Georgia-Pacific continued to manufacture and sell the product after it acquired Bestwall in 1965.

Texture: Bestwall/Georgia-Pacific Texture was sold under the various trade or brand names

including: Certex, Bestex, Wall Texture, Ceiling Texture/Vermiculite and Ceiling Texture Polystyrene. Asbestos containing Texture contains zero to fifteen percent chrysotile asbestos.

Topping Compound. Bestwall first sold Topping Compound in 1956 and Georgia-Pacific continued to manufacture Topping Compound after it acquired Bestwall in 1965 up until approximately 1977. Asbestos containing Topping Compound contained zero to seven percent chrysotile asbestos.

Triple Duty Joint Compound. Georgia-Pacific has sold Triple Duty Joint Compound under the following brand names: Triple Duty Joint Compound, Triple Duty Wallboard Joint Compound, and Triple Duty Joint Compound-Vinyl Based Adhesive. Georgia-Pacific sold Triple Duty Joint Compound in 1965 and continued until 1977. Georgia-Pacific asbestos containing Triple Duty Joint Compound contained zero to seven percent chrysotile asbestos.

That's it, judge.

THE COURT: All right. Defendant rests?

MR. CROSBY: Defendant rests, Your Honor.

THE COURT: Plaintiff rests?

MR. PONTERIO: Yes.

MR. VONA: Yes, Your Honor.

THE COURT: All right. That means that the parties have presented all of the evidence that they intend to present in this case. And the next step which will occur tomorrow is that the attorneys will sum up to you and I will then give you the final instructions on the law and you will deliberate and render a verdict in this case.

Overnight, don't talk about the case among yourselves and don't talk about it with anybody else. It's very important that you keep following this restriction until after you finish your business here. It's very important that you not discuss the case or formulate an opinion now because you haven't heard their summations and you haven't heard my final instructions on the law. We're in recess now. Thank you very much. Tomorrow there's a couple things we have got to do in the morning, so please be here at 10:00 o'clock in the morning. Thank you. Enjoy the evening.

MR. CROSBY: Your Honor, before the jury leaves --

THE COURT: Just a minute, jurors.

MR. CROSBY: Can we see you before the jury leaves?

(Whereupon a bench conference was held)

THE COURT: 10:00 o'clock tomorrow morning. We just agreed that we'll be here at 9:00 o'clock.

(Proceedings concluded)