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I N D E X

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1 THURSDAY, APRIL 17, 2014

9:30 A.M.

2 --oOo--

3
4 THE COURT: Good morning. Nice to see you.
5 We're all together. Come to order now. We're going to
6 continue with the cross-examination conducted by
7 Ms. Gambino, but I wanted to touch base with you on the
8 schedule, and make sure everybody feels comfortable here.

9 Of course you've committed to service up to and
10 including May 16th, and if jury deliberations were
11 continuing, as much longer as was necessary to complete
12 those discussions. But, consistent with my experience
13 we're right on track here, and I think it will be
14 concluded earlier; that's always my hope, but we don't
15 rush people, just have full days.

16 It's the expectation, announced by plaintiff's
17 counsel, that their case in chief, that's the main case,
18 and they rest subject to any rebuttal, if necessary, at
19 the end of the defense presentation, will be concluded by
20 next Wednesday -- the end of the day on next Wednesday.
21 And then if that's the case, no harm no foul; or if it
22 goes a little longer. But we've been going through the
23 witnesses and so forth, and that's the expectation.

24 Then we would be in session on the following
25 day, Thursday and Friday. And it's the week after that,
26 the week after that we'll certainly be together where we
27 will not be in session on Monday the 28th and Tuesday the
28 29th. I have a case I've got to drive down to Modesto on

1 and complete preparation for that.

2 Then we'll be in session on the 30th, the 1st
3 and the 2nd: Wednesday, Thursday and Friday, and probably
4 the whole week following, May 5th. But I have reason to
5 hope that we won't be in session all week on the 12th.

6 One other housekeeping issue. I told counsel
7 that, and they certainly agreed, that I want them to bring
8 in, by tomorrow morning, all of the originals and copies
9 of those jury questionnaires that people filled out, and
10 we'll get them to affirm here in court. They'll be
11 presented to our clerk for shredding.

12 We told you that that would be confidential
13 information, and we'll make sure we do that, and we keep
14 track of those things and don't forget them.

15 So I think, without further ado, we will
16 continue with the cross-examination.

17 It's cross-examination, but you understand that
18 this is all being conducted now so our witness can go back
19 to Japan, rather than have Ms. Gambino call him later.
20 You may continue.

21 MS. GAMBINO: Thank you, your Honor. Good
22 morning.

23 MASAHIKO UCHINO

24 Called as a witness on behalf of the Plaintiff,
25 and after being previously duly sworn to tell the truth,
26 the whole truth and nothing but the truth, testified as is
27 hereinafter set forth:

28 ////

REDIRECT EXAMINATION

BY MS. GAMBINO:

Q. Good morning, Mr. Uchino.

MS. GAMBINO: Before I start asking Mr. Uchino questions, I'd like to direct the Court and counsel to Exhibit 7017, which was admitted into evidence yesterday.

THE COURT: Yes.

MS. GAMBINO: And on page seven, I would like to read from the --

THE COURT: And just to refresh our recollection, this is the document that has Voss and Kubota Asbestos Cement Pressure Pipe, and the witness testified about that document, and you may refer to it.

MS. GAMBINO: And at the top of the page, I'd like to read the first caption there.

THE COURT: And that's which page, again?

MS. GAMBINO: I'm sorry, it's page seven, Bate stamp seven.

THE COURT: Thank you.

MS. GAMBINO: "Voss yards are equipped for cutting short sections and green machine ends to accept Voss K A couplings."

BY MS. GAMBINO:

Q. Okay. Mr. Uchino, would you please look at the exhibit that's marked for identification as 7019?

A. Yes.

Q. And have you seen this document before?

A. Yes, I have.

1 Q. Is this one of the documents that you located
2 when you were researching the history of the Kubota
3 asbestos cement plant company? Asbestos cement
4 manufacturing plant.

5 A. Yes, that's correct.

6 Q. And do you know who prepared this document?

7 A. Yes, I know who prepared this document.

8 Q. And who was that?

9 A. It was prepared by a person named Nakao,
10 N-a-k-a-o. Although I can't remember exactly what it was
11 referring to, but I believe he was with the department
12 called Overseas Support Department.

13 Q. And do you know when Mr. Nakao prepared this
14 document?

15 A. Yes.

16 Q. And when was that?

17 A. Yes, he prepared it in September, 1980.

18 Q. Do you know if Mr. Nakao is still alive?

19 A. No, I don't.

20 THE COURT: I'm sorry. I'll ask our
21 interpreter. You just said the year this was prepared;
22 what year was that?

23 THE INTERPRETER: September 19, 1980.

24 THE COURT: Thank you.

25 BY MS. GAMBINO:

26 Q. Do you know how to get into contact with Mr.
27 Nakao -- or strike that.

28 Have you tried to get into contact with Mr.

1 **Nakao?**

2 A. Yes, I have tried.

3 Q. And you were unable to locate him; is that
4 **correct?**

5 A. That's correct.

6 Q. Did you find this document with other business
7 **records that are maintained by the Kubota Corporation?**

8 A. Yes.

9 MS. GAMBINO: Your Honor, I would like to offer
10 this document into evidence. Actually before I do that,
11 I'm sorry.

12 BY MS. GAMBINO:

13 Q. Mr. Uchino, could you please briefly describe
14 **to us what this document is?**

15 A. This is a line graph reflecting the total
16 amount of asbestos cement pipes exported to the United
17 States in a community manner from 1962 to 1975.

18 MS. GAMBINO: Your Honor, I'd like to offer
19 this exhibit into evidence, please.

20 THE COURT: Yes, that's admitted.

21 MS. GAMBINO: Thank you.

22 (Defendant's Exhibit 7019
23 was received in evidence.)

24 THE COURT: It's one of the few cases I can
25 refer to the recitals and ancient writings exception to
26 the hearsay rule, 1331 of the Evidence Code.

27 MS. GAMBINO: And may I publish it, please?

28 THE COURT: Yes.

1. MS. GAMBINO: Thank you.

2 BY MS. GAMBINO:

3 Q. Mr. Uchino, do you know what Kubota's share of
4 the asbestos cement pipe market was in 1972?

5 MR. BRATT: Calls for speculation, your Honor.
6 Lacks foundation.

7 THE COURT: Ask him to lay a foundation.

8 Objection sustained as to form.

9 MS. GAMBINO: I'll ask a different question.

10 BY MS. GAMBINO:

11 Q. Mr. Uchino, could you please read the years
12 that are referred to on this document, Exhibit 7019, and
13 the first page of that document?

14 A. The first year reflected is 1962.

15 Q. And is there a last year mentioned on that
16 document?

17 A. 1975.

18 Q. And Mr. Uchino, I'm putting the first page, it
19 looks to me like a graph up on the screen.

20 A. Yes.

21 Q. I think we've got most of the graph up there.

22 Mr. Uchino, can you read from this graph how
23 much AC pipe Kubota sold in the United States after 1972?

24 THE WITNESS: Your Honor, may I stand up?

25 THE COURT: Yes, you may.

26 THE WITNESS: 1972 is right there, and the
27 Japanese fiscal year begins in April. So if you please
28 follow '72, and at the month of April on, that is where

1 the flat part of the graph starts. So from this graph,
2 you can tell that starting April, 1972 on, there was next
3 to none amount exported to the United States from us.

4 BY MS. GAMBINO:

5 Q. All right. And now Mr. Uchino, I'm going to
6 put up a second page of that Exhibit 7019. Can you tell
7 me what dates are indicated on that chart?

8 A. This chart reflects two numbers. One number
9 reflected in this chart is a total tonnage of AC pipes
10 exported between 1962 and 1975.

11 Second number reflected in this chart is Yen
12 based total amount associated with AC pipes being exported
13 between 1962 and 1975.

14 Q. And Mr. Uchino, can you tell from this chart --
15 does this chart indicate what the total tonnage was for the
16 export of Kubota asbestos cement pipe to the United States
17 in 1970?

18 A. Did you say 1970?

19 Q. Yes, 1970.

20 A. Again your question was what was the total
21 amount or total tonnage sold to the United States in 1970?

22 Q. That's correct.

23 A. Oh, yes. I can see that, yes.

24 Q. Okay. And can you tell me what that number is?

25 A. Let me show you in 1970. First half the total
26 tonnage sold is 9,126 tons, according to this chart. 9176.
27 Also same thing, 1970, second half, the total amount sold
28 is 7,974 tons.

1 Q. Okay. Mr. Uchino, can you -- can I ask you the
2 same question regarding 1971. What was the total amount
3 of AC pipe that was sold, that went to the United States?

4 THE INTERPERTER: He is saying, '76, '76, '76.

5 THE WITNESS: Yes, the first half of 1971, the
6 total amount sold was 8,568 tons. The second half of 1971
7 the total amount sold was 10,922 tons.

8 BY MS. GAMBINO:

9 Q. Okay. And was there -- does the chart indicate
10 what was sold in the first half?

11 THE COURT: Didn't he just say that, 8,568
12 tons?

13 MS. GAMBINO: Thank you.

14 BY MS. GAMBINO:

15 Q. And I'd like to ask the same question for 1972.
16 Can you tell me what the total tonage was of asbestos
17 cement pipe sold to the United States?

18 A. The first half of 1972 the total amount sold
19 was 2,241 tons. Second half of '72, the total amount sold
20 was 5,547 tons.

21 Q. Mr. Uchino, I noticed that you were struggling
22 a little bit to answer those questions and I realize, does
23 the Japanese system of dates, does it differ from what we
24 use in the United States?

25 A. That is correct.

26 Q. Okay. And so if you look at what is on this
27 chart, I believe the second column, we see a series of
28 numbers starting with '60, '61, '62, '63. Can you tell me

1 what those numbers refer to?

2 A. These numbers indicate our corporate fiscal
3 years.

4 Q. And is that according to the Japanese system,
5 or the system that we use in the United States?

6 A. It was according to the Japanese accounting
7 system.

8 Q. So, if we look on the chart at -- down at the
9 very bottom of that first column, and if you refer to the
10 date that says October, looks like October '86, is there a
11 counterpart in -- under the U.S. system of what year that
12 would be?

13 THE COURT: Ms. Watanabe, I've handed you a
14 note. Would you please quietly pass it to each attorney,
15 who might read it to themselves, and then return it to the
16 clerk?

17 Please continue.

18 THE WITNESS: I don't believe there is a
19 difference between the Japanese and American accounting
20 systems. This is Kubota's accounting system reflecting
21 calendar or fiscal years. For example, this number 60 has
22 nothing to do with the United States.

23 If you're referring to the number next to it,
24 however, yes, it is Japanese specific. For example, you
25 are going to see the number 475210, 47 stands for Showa.
26 S-h-o-w-a, 47. Showa 47 indicates the 47th year of Showa
27 emperor. Each emperor has a very unique year name after
28 he came to assume his duty. So, Showa 47, equal to 1972.

1 Consequently,
2 475210 indicates May, to October, 1972.

3 BY MS. GAMBINO:

4 Q. Let me ask see if I can ask one more question
5 and try to clarify this. Can you show the jury on the
6 chart, which line refers to 1975, in American -- according
7 to the American system?

8 A. 1972 is this line.

9 MS. GAMBINO: I'm sorry, madam interpreter, was
10 that 1972 or 1975?

11 THE WITNESS: '75.

12 MS. GAMBINO: Okay. Thank you.

13 BY MS. GAMBINO:

14 Q. Thank you, Mr. Uchino. I think you're done
15 with that.

16 Mr. Uchino, do you know when Kubota stopped
17 making asbestos cement pipe all together?

18 A. Yes, I do.

19 Q. And when was that?

20 A. November the 2nd, 1975.

21 Q. And when you were searching the history of the
22 pipe making plant, did you come across any records that
23 indicated that that was the closing date?

24 A. Yes.

25 Q. Okay. And what document did you come across?

26 A. I found a copy of anniversary booklet prepared
27 by union of the factory, and in this anniversary booklet
28 there was a picture entitled November the 2nd, Showa 50,

1 meaning 1975, the final day of AC pipe production.

2 Q. Mr. Uchino, would you please look at what we
3 marked for identification as Exhibit 7021.

4 A. Yes.

5 Q. Okay. And is this the picture that you were
6 referring to?

7 A. Yes, that's correct.

8 Q. And did you find this picture that was on the
9 anniversary booklet, with other documents that Kubota
10 maintained, other business records?

11 A. Yes.

12 Q. And can you tell me what the date is of this
13 particular picture here?

14 A. It says Showa 50, November the 2nd, which means
15 1975, November the 2nd.

16 MS. GAMBINO: Your Honor, I'd like to offer
17 this exhibit into evidence.

18 THE COURT: Yes, it is received.

19 (Defendant's Exhibit 7021
20 was received in evidence.)

21 THE COURT: So just a clarifying question, once
22 again. It says S period 50 period 11 period, two. So the
23 the way of recording it is the 11 is November?

24 THE WITNESS: Yes.

25 THE COURT: And the two is the second?

26 THE WITNESS: Yes.

27 THE COURT: The only thing that would be
28 unfamiliar to us is that the S 50, means Showa 50, which

1 is explained, but he can tell us that that means 1975, the
2 way that we record it.

3 THE WITNESS: That's exactly right.

4 THE COURT: Thank you, Mr. Uchino.

5 You may publish it.

6 MS. GAMBINO: Yes, thank you, your Honor.

7 BY MS. GAMBINO:

8 Q. Mr. Uchino, is this the photograph that we have
9 been talking about?

10 A. Yes, that's correct.

11 Q. And do you know -- do you recognize the
12 location where this photograph was taken?

13 A. If you take a look at the caption in this
14 photograph, it says S 50, November the 2nd. In front of
15 the number six pipe machining device for AC pipes. So I
16 can tell this was taken inside of the plant. But if you
17 ask me if I ever got inside of the plant, no, because when
18 I joined the Kubota Corporation the plant was already
19 gone, so I never had a chance to walk inside of the plant
20 myself.

21 Q. Do you recognize any of the people in this
22 photograph?

23 A. No, I don't know any of them.

24 Q. Okay. Thank you.

25 A. Some of them look younger than I am.

26 Q. Do you know why Kubota closed the plant on
27 November 2nd, 1975?

28 A. Yes.

1 **Q. And what is the reason?**

2 A. There are three main reasons: The first reason
3 is a domestic reason, also known as the Japanese national
4 road issues -- issue. In Japan, most of the water pipes
5 were buried under national road, which were facilitated by
6 Ministry of Construction. Back then, Japan was in
7 industry of growth time. It was after World War II ended,
8 so Japan was trying to rebuild, therefore national roads
9 were expanding and consequently underneath of these roads
10 AC pipes were buried. However, because the amount of the
11 traffic increased, and the weight of each truck increased,
12 AC pipes couldn't bear these heavy traffic as well as the
13 amount of -- excuse me, weight of the trucks anymore, and
14 they started to burst under the national road, and that
15 happened quite often.

16 As a result, Ministry of Construction made a
17 decision that they were no longer using AC pipes, quote
18 water supply pipes, which were buried underneath of the
19 national roads, which was a big problem for AC pipe
20 manufacturers. Everybody tried to create stronger AC
21 pipes so that our demand would have continued, but we were
22 unable to do so. Consequently, the demand for the AC
23 pipes in the domestic Japanese market decreased
24 significantly. That was the first reason.

25 The second reason was the issue of U.S. dollar
26 and the Japanese Yen exchange rate. Upon December of
27 1971, the dollar/Yen ratio was fixed. A dollar was worth
28 360 Yen. Dollar was very strong compared to Japanese Yen.

1 But in December of 1971, the fixed rate was removed and
2 changed the variable exchange rate. All of a sudden, the
3 dollar/Yen ratio changed from 360 to 308, and then down to
4 200, meaning that Japanese Yen became suddenly very strong
5 against the U.S. dollars. This was not a good news for
6 Japanese export companies who were trying to sell goods in
7 the United States, because all of a sudden we lost our
8 competitive edge by 20 percent or more.

9 On top of that, in May of 1972, the U.S. agency
10 ITC, made a decision that if you choose to export your AC
11 pipes in the United States, any Japanese AC pipe
12 manufacturers has to pay dumping duty, because ITC decided
13 that Japanese AC pipe manufacturers were pricing their AC
14 pipes much lower than the price of U.S. AC pipe
15 manufacturers; therefore, we lost our competitiveness by
16 the strong Japanese Yen phenomena, on top of that, we have
17 to pay duty due to the decision made by ITC. Because of
18 this, after May, 1972, realistically it was next to
19 impossible for us to export our goods to the United
20 States.

21 The third reason was the Japanese government
22 revising the existing law. In this law, which was revised
23 on September the 30th, 1975, the Japanese government
24 suggested a possible connection between asbestos and
25 cancer. This was announced on September 30th, 1975, and
26 became effective October 1st, 1975. We made the decision
27 of closing our AC pipe plant long before this, with other
28 reasons, but this revision and the position of asbestos

1 could be connected to cancer made our decisions even
2 firmer, that this is a business we need to stop. So, with
3 all these reasons, we stopped manufacturing our AC pipes
4 at our plant in November '75.

5 Q. Thank you.

6 Mr. Uchino, do you know where Kubota obtained
7 the asbestos fibers that it used in its AC pipe?

8 A. Yes, I do.

9 Q. Okay. And where was that?

10 And do you know?

11 THE COURT: Excuse me, she needs to tell us the
12 answer.

13 MS. GAMBINO: Thank you.

14 THE WITNESS: We purchased our asbestos fibers
15 by Johns Manville through a trading company called Tokyo
16 Kogyo Boeki Shokai. Tokyo, T-o-k-y-o. Kogyo, K-o-g-y-o.
17 Boeki, B-o-e-k-i. Shokai, S-h-o-k-a-i.

18 BY MS. GAMBINO:

19 Q. Thank you. Do you know if Johns Manville ever
20 provided any warnings to Kubota Corporation when it was
21 providing this fiber for the AC pipe?

22 A. No, I don't. At least -- at least what I
23 understand is that they did not provide us anything before
24 1975, but I don't know the details.

25 Q. Mr. Uchino, yesterday Mr. Bratt asked you if
26 Kubota ever put warnings on AC pipes sold in the United
27 States, and your answer was that they did not. Do you
28 know why they didn't put warnings on their pipe?

1 A. Because we didn't think that the end users of
2 Voss needed to cut our pipes at their work site; that was
3 the reason why we didn't provide warnings. As I explained
4 to the counsel yesterday, we provided many different types
5 of length amongst our products so that they are easy to
6 use by the users. We provided full length, half length
7 and quarter length.

8 As a matter of fact, this product is so easy,
9 because you don't have to cut them, was one of the sales
10 point of our products. We really didn't expect the end
11 users to cut our products at their work site.

12 Also, our thinking was, let's just say once in
13 a blue moon if anyone needed to cut these pipes at their
14 work site, it would be done outside, it's not going to be
15 done inside; therefore even if they needed to cut, even
16 though it would be very rarely, the amount of exposure
17 toward asbestos would be so minimum that we didn't need to
18 warn them. That was our reasons.

19 Q. Mr. Uchino, did Kubota Corporation ever send
20 any technical support to the United States to work with
21 its clients, such as East Bay Mud, and to trouble shoot
22 any problems that those clients might have with their
23 pipe?

24 A. No, Kubota Corporation did not provide such
25 support to the end users.

26 Q. Mr. Uchino, yesterday Mr. Bratt asked you about
27 some legislation titled the 1960 Pneumoconiosis Act. Are
28 you familiar with that act?

1 A. Yes.

2 THE COURT: The year again, counsel?

3 MS. GAMBINO: I'm sorry, it was the 1960
4 pneumoconiosis.

5 THE COURT: You said it --

6 THE WITNESS: Yes, I do.

7 BY MS. GAMBINO:

8 Q. And just very briefly, can you tell us, just
9 generally, what that act said?

10 A. This act was created mainly through product
11 mine workers who are working in coal mines. They were
12 exposed to coal dust in a significant way, and many of
13 these mine workers were having many lung disease,
14 including tuberculosis. This act was provided --
15 providing to protect these mine workers, specifically
16 requiring the employers to provide regular physical exams
17 and make sure that mine workers wear appropriate
18 protection gears and so forth.

19 Q. Does this act specifically mention any
20 particular mineral dust?

21 A. Yes. If you look at the detailed attachment
22 portion of the law, yes, you can see the list.

23 Q. And do you remember any of the dusts that are
24 identified?

25 A. I remember that asbestos was included.

26 Q. Any others that you remember?

27 A. I apologize, I can't remember while I'm sitting
28 here today.

1 Q. All right. Mr. Uchino, if my understanding is
2 correct, this was an act that was intended to protect
3 workers and employees; is that correct?

4 A. Yes.

5 Q. And did Kubota Corporation follow the
6 requirements of this act?

7 A. Yes, it did.

8 Q. And what did it do to follow the requirements?

9 A. Kubota Corporation provided dust masks for the
10 workers who were in the working environment where dust
11 were flying in the air, to protect them from inhaling
12 these dusts. In addition, Kubota Corporation made sure
13 that these workers would would get regularly scheduled
14 health examinations. In addition, to make sure these are
15 going to be permeated throughout the company, I believe it
16 was around 1962, Kubota Corporation started to publish a
17 newsletter entitled "Safety and Hygiene Monthly Report."
18 Using this newsletter, Kubota Corporation told its workers
19 and employees the importance of wearing protection gears
20 and also importance of getting regular health
21 examinations.

22 Q. Mr. Uchino, I'd like to direct your attention
23 to what's been marked for identification as Exhibit 7023.

24 THE COURT: Just for your information, at
25 quarter to the hour we'll take our break.

26 MS. GAMBINO: Thank you, your Honor.

27 BY MS. GAMBINO:

28 Q. Mr. Uchino, have you seen this document before?

1 A. Counsel, did you say 7023?

2 Q. Yes, 7023.

3 A. Yes, I have it in front of me.

4 Q. Okay.

5 A. I have the document in front of me and I have
6 seen this before.

7 Q. Thank you. And that is a four-page document
8 that's Bate stamped through page four.

9 Mr. Uchino, can you just briefly tell me what
10 is this document?

11 A. I think it's an ad for a pipe cutter.

12 Q. And is there a date on this document?

13 A. I'm sorry, I couldn't hear you.

14 Q. Is there a date on the document?

15 A. Yes, there is a date on this document.

16 Q. And can you tell me what that is?

17 A. The date is February the 3rd, 1975. The ad
18 placed on the paper issued February the 3rd, 1975.

19 MS. GAMBINO: Your Honor, I'd like to offer
20 these documents into evidence.

21 THE COURT: Very well, they're admitted.

22 MS. GAMBINO: Thank you.

23 (Defendant's Exhibit 7023
24 was received in evidence.)

25 MS. GAMBINO: And may I publish them?

26 THE COURT: Yes.

27 MS. GAMBINO: Thank you.

28 BY MS. GAMBINO:

1. Q. Mr. Uchino, on the first page of this Exhibit
2 7023, there are, it looks like three drawings. Do you --

3 THE COURT: Can you turn it?

4 THE WITNESS: Yes, I see three drawings.

5 BY MS. GAMBINO:

6 Q. Do you know what those drawings depict?

7 A. May I stand?

8 THE COURT: Yes.

9 BY MS. GAMBINO:

10 Q. Okay. What are they? If you could explain to
11 the jury, please.

12 A. This indicates different types of cutters for
13 cutting your pipes. I believe that this is a patented
14 technology held by the U.S. based company called Reed.
15 What this is, is that the Reed brand cutter was sold in
16 Japan, trying to introduce this cutter to the Japanese
17 users, basically saying that if you needed to cut AC
18 pipes, you can use a cutter like this, and recommending
19 you to use a cutter like this by using this ad.

20 Q. And Mr. Uchino, now I'm going to show you a
21 document, it's page -- it's Bate stamped number four, in
22 that same exhibit. And obviously -- well I'll ask you.
23 Is this a document that's in Japanese?

24 A. Yes.

25 Q. And can you tell me what's depicted in this
26 document, in the diagram, or the photograph -- drawings?
27 Excuse me.

28 A. This is also an ad introducing several

Kubota #42

April 2014

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
BEFORE THE HONORABLE LESLIE NICHOLS, JUDGE
DEPARTMENT 9

PAMELA J. O'BRYAN,

PLAINTIFF,

vs.

A.H. VOSS COMPANY (sued individually
and as successor-in-interest to
VOSS INTERNATIONAL CORPORATION), et
al.,

DEFENDANTS.

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) No. C13-01926
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 17, 2014

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1 THURSDAY, APRIL 17, 2014

9:30 A.M.

2 --oOo--

3
4 THE COURT: Good morning. Nice to see you.
5 We're all together. Come to order now. We're going to
6 continue with the cross-examination conducted by
7 Ms. Gambino, but I wanted to touch base with you on the
8 schedule, and make sure everybody feels comfortable here.

9 Of course you've committed to service up to and
10 including May 16th, and if jury deliberations were
11 continuing, as much longer as was necessary to complete
12 those discussions. But, consistent with my experience
13 we're right on track here, and I think it will be
14 concluded earlier; that's always my hope, but we don't
15 rush people, just have full days.

16 It's the expectation, announced by plaintiff's
17 counsel, that their case in chief, that's the main case,
18 and they rest subject to any rebuttal, if necessary, at
19 the end of the defense presentation, will be concluded by
20 next Wednesday -- the end of the day on next Wednesday.
21 And then if that's the case, no harm no foul; or if it
22 goes a little longer. But we've been going through the
23 witnesses and so forth, and that's the expectation.

24 Then we would be in session on the following
25 day, Thursday and Friday. And it's the week after that,
26 the week after that we'll certainly be together where we
27 will not be in session on Monday the 28th and Tuesday the
28 29th. I have a case I've got to drive down to Modesto on

1 and complete preparation for that.

2 Then we'll be in session on the 30th, the 1st
3 and the 2nd: Wednesday, Thursday and Friday, and probably
4 the whole week following, May 5th. But I have reason to
5 hope that we won't be in session all week on the 12th.

6 One other housekeeping issue. I told counsel
7 that, and they certainly agreed, that I want them to bring
8 in, by tomorrow morning, all of the originals and copies
9 of those jury questionnaires that people filled out, and
10 we'll get them to affirm here in court. They'll be
11 presented to our clerk for shredding.

12 We told you that that would be confidential
13 information, and we'll make sure we do that, and we keep
14 track of those things and don't forget them.

15 So I think, without further ado, we will
16 continue with the cross-examination.

17 It's cross-examination, but you understand that
18 this is all being conducted now so our witness can go back
19 to Japan, rather than have Ms. Gambino call him later.
20 You may continue.

21 MS. GAMBINO: Thank you, your Honor. Good
22 morning.

23 MASAHIKO UCHINO

24 Called as a witness on behalf of the Plaintiff,
25 and after being previously duly sworn to tell the truth,
26 the whole truth and nothing but the truth, testified as is
27 hereinafter set forth:

28 ////

REDIRECT EXAMINATION

BY MS. GAMBINO:

Q. Good morning, Mr. Uchino.

MS. GAMBINO: Before I start asking Mr. Uchino questions, I'd like to direct the Court and counsel to Exhibit 7017, which was admitted into evidence yesterday.

THE COURT: Yes.

MS. GAMBINO: And on page seven, I would like to read from the --

THE COURT: And just to refresh our recollection, this is the document that has Voss and Kubota Asbestos Cement Pressure Pipe, and the witness testified about that document, and you may refer to it.

MS. GAMBINO: And at the top of the page, I'd like to read the first caption there.

THE COURT: And that's which page, again?

MS. GAMBINO: I'm sorry, it's page seven, Bate stamp seven.

THE COURT: Thank you.

MS. GAMBINO: "Voss yards are equipped for cutting short sections and green machine ends to accept Voss K A couplings."

BY MS. GAMBINO:

Q. Okay. Mr. Uchino, would you please look at the exhibit that's marked for identification as 7019?

A. Yes.

Q. And have you seen this document before?

A. Yes, I have.

1 Q. Is this one of the documents that you located
2 when you were researching the history of the Kubota
3 asbestos cement plant company? Asbestos cement
4 manufacturing plant.

5 A. Yes, that's correct.

6 Q. And do you know who prepared this document?

7 A. Yes, I know who prepared this document.

8 Q. And who was that?

9 A. It was prepared by a person named Nakao,
10 N-a-k-a-o. Although I can't remember exactly what it was
11 referring to, but I believe he was with the department
12 called Overseas Support Department.

13 Q. And do you know when Mr. Nakao prepared this
14 document?

15 A. Yes.

16 Q. And when was that?

17 A. Yes, he prepared it in September, 1980.

18 Q. Do you know if Mr. Nakao is still alive?

19 A. No, I don't.

20 THE COURT: I'm sorry. I'll ask our
21 interpreter. You just said the year this was prepared;
22 what year was that?

23 THE INTERPRETER: September 19, 1980.

24 THE COURT: Thank you.

25 BY MS. GAMBINO:

26 Q. Do you know how to get into contact with Mr.
27 Nakao -- or strike that.

28 Have you tried to get into contact with Mr.

1 **Nakao?**

2 A. Yes, I have tried.

3 Q. And you were unable to locate him; is that
4 **correct?**

5 A. That's correct.

6 Q. Did you find this document with other business
7 **records that are maintained by the Kubota Corporation?**

8 A. Yes.

9 MS. GAMBINO: Your Honor, I would like to offer
10 this document into evidence. Actually before I do that,
11 I'm sorry.

12 BY MS. GAMBINO:

13 Q. Mr. Uchino, could you please briefly describe
14 **to us what this document is?**

15 A. This is a line graph reflecting the total
16 amount of asbestos cement pipes exported to the United
17 States in a community manner from 1962 to 1975.

18 MS. GAMBINO: Your Honor, I'd like to offer
19 this exhibit into evidence, please.

20 THE COURT: Yes, that's admitted.

21 MS. GAMBINO: Thank you.

22 (Defendant's Exhibit 7019
23 was received in evidence.)

24 THE COURT: It's one of the few cases I can
25 refer to the recitals and ancient writings exception to
26 the hearsay rule, 1331 of the Evidence Code.

27 MS. GAMBINO: And may I publish it, please?

28 THE COURT: Yes.

1. MS. GAMBINO: Thank you.

2. BY MS. GAMBINO:

3. Q. Mr. Uchino, do you know what Kubota's share of
4. the asbestos cement pipe market was in 1972?

5. MR. BRATT: Calls for speculation, your Honor.
6. Lacks foundation.

7. THE COURT: Ask him to lay a foundation.

8. Objection sustained as to form.

9. MS. GAMBINO: I'll ask a different question.

10. BY MS. GAMBINO:

11. Q. Mr. Uchino, could you please read the years
12. that are referred to on this document, Exhibit 7019, and
13. the first page of that document?

14. A. The first year reflected is 1962.

15. Q. And is there a last year mentioned on that
16. document?

17. A. 1975.

18. Q. And Mr. Uchino, I'm putting the first page, it
19. looks to me like a graph up on the screen.

20. A. Yes.

21. Q. I think we've got most of the graph up there.

22. Mr. Uchino, can you read from this graph how
23. much AC pipe Kubota sold in the United States after 1972?

24. THE WITNESS: Your Honor, may I stand up?

25. THE COURT: Yes, you may.

26. THE WITNESS: 1972 is right there, and the
27. Japanese fiscal year begins in April. So if you please
28. follow '72, and at the month of April on, that is where

1 the flat part of the graph starts. So from this graph,
2 you can tell that starting April, 1972 on, there was next
3 to none amount exported to the United States from us.

4 BY MS. GAMBINO:

5 Q. All right. And now Mr. Uchino, I'm going to
6 put up a second page of that Exhibit 7019. Can you tell
7 me what dates are indicated on that chart?

8 A. This chart reflects two numbers. One number
9 reflected in this chart is a total tonage of AC pipes
10 exported between 1962 and 1975.

11 Second number reflected in this chart is Yen
12 based total amount associated with AC pipes being exported
13 between 1962 and 1975.

14 Q. And Mr. Uchino, can you tell from this chart --
15 does this chart indicate what the total tonage was for the
16 export of Kubota asbestos cement pipe to the United States
17 in 1970?

18 A. Did you say 1970?

19 Q. Yes, 1970.

20 A. Again your question was what was the total
21 amount or total tonage sold to the United States in 1970?

22 Q. That's correct.

23 A. Oh, yes. I can see that, yes.

24 Q. Okay. And can you tell me what that number is?

25 A. Let me show you in 1970. First half the total
26 tonage sold is 9,126 tons, according to this chart. 9176.
27 Also same thing, 1970, second half, the total amount sold
28 is 7,974 tons.

1 Q. Okay. Mr. Uchino, can you -- can I ask you the
2 same question regarding 1971. What was the total amount
3 of AC pipe that was sold, that went to the United States?

4 THE INTERPERTER: He is saying, '76, '76, '76.

5 THE WITNESS: Yes, the first half of 1971, the
6 total amount sold was 8,568 tons. The second half of 1971
7 the total amount sold was 10,922 tons.

8 BY MS. GAMBINO:

9 Q. Okay. And was there -- does the chart indicate
10 what was sold in the first half?

11 THE COURT: Didn't he just say that, 8,568
12 tons?

13 MS. GAMBINO: Thank you.

14 BY MS. GAMBINO:

15 Q. And I'd like to ask the same question for 1972.
16 Can you tell me what the total tonage was of asbestos
17 cement pipe sold to the United States?

18 A. The first half of 1972 the total amount sold
19 was 2,241 tons. Second half of '72, the total amount sold
20 was 5,547 tons.

21 Q. Mr. Uchino, I noticed that you were struggling
22 a little bit to answer those questions and I realize, does
23 the Japanese system of dates, does it differ from what we
24 use in the United States?

25 A. That is correct.

26 Q. Okay. And so if you look at what is on this
27 chart, I believe the second column, we see a series of
28 numbers starting with '60, '61, '62, '63. Can you tell me

1 what those numbers refer to?

2 A. These numbers indicate our corporate fiscal
3 years.

4 Q. And is that according to the Japanese system,
5 or the system that we use in the United States?

6 A. It was according to the Japanese accounting
7 system.

8 Q. So, if we look on the chart at -- down at the
9 very bottom of that first column, and if you refer to the
10 date that says October, looks like October '86, is there a
11 counterpart in -- under the U.S. system of what year that
12 would be?

13 THE COURT: Ms. Watanabe, I've handed you a
14 note. Would you please quietly pass it to each attorney,
15 who might read it to themselves, and then return it to the
16 clerk?

17 Please continue.

18 THE WITNESS: I don't believe there is a
19 difference between the Japanese and American accounting
20 systems. This is Kubota's accounting system reflecting
21 calendar or fiscal years. For example, this number 60 has
22 nothing to do with the United States.

23 If you're referring to the number next to it,
24 however, yes, it is Japanese specific. For example, you
25 are going to see the number 475210, 47 stands for Showa.
26 S-h-o-w-a, 47. Showa 47 indicates the 47th year of Showa
27 emperor. Each emperor has a very unique year name after
28 he came to assume his duty. So, Showa 47, equal to 1972.

1 Consequently,
2 475210 indicates May, to October, 1972.

3 BY MS. GAMBINO:

4 Q. Let me ask see if I can ask one more question
5 and try to clarify this. Can you show the jury on the
6 chart, which line refers to 1975, in American -- according
7 to the American system?

8 A. 1972 is this line.

9 MS. GAMBINO: I'm sorry, madam interpreter, was
10 that 1972 or 1975?

11 THE WITNESS: '75.

12 MS. GAMBINO: Okay. Thank you.

13 BY MS. GAMBINO:

14 Q. Thank you, Mr. Uchino. I think you're done
15 with that.

16 Mr. Uchino, do you know when Kubota stopped
17 making asbestos cement pipe all together?

18 A. Yes, I do.

19 Q. And when was that?

20 A. November the 2nd, 1975.

21 Q. And when you were searching the history of the
22 pipe making plant, did you come across any records that
23 indicated that that was the closing date?

24 A. Yes.

25 Q. Okay. And what document did you come across?

26 A. I found a copy of anniversary booklet prepared
27 by union of the factory, and in this anniversary booklet
28 there was a picture entitled November the 2nd, Showa 50,

1 meaning 1975, the final day of AC pipe production.

2 Q. Mr. Uchino, would you please look at what we
3 marked for identification as Exhibit 7021.

4 A. Yes.

5 Q. Okay. And is this the picture that you were
6 referring to?

7 A. Yes, that's correct.

8 Q. And did you find this picture that was on the
9 anniversary booklet, with other documents that Kubota
10 maintained, other business records?

11 A. Yes.

12 Q. And can you tell me what the date is of this
13 particular picture here?

14 A. It says Showa 50, November the 2nd, which means
15 1975, November the 2nd.

16 MS. GAMBINO: Your Honor, I'd like to offer
17 this exhibit into evidence.

18 THE COURT: Yes, it is received.

19 (Defendant's Exhibit 7021
20 was received in evidence.)

21 THE COURT: So just a clarifying question, once
22 again. It says S period 50 period 11 period, two. So the
23 the way of recording it is the 11 is November?

24 THE WITNESS: Yes.

25 THE COURT: And the two is the second?

26 THE WITNESS: Yes.

27 THE COURT: The only thing that would be
28 unfamiliar to us is that the S 50, means Showa 50, which

1 is explained, but he can tell us that that means 1975, the
2 way that we record it.

3 THE WITNESS: That's exactly right.

4 THE COURT: Thank you, Mr. Uchino.

5 You may publish it.

6 MS. GAMBINO: Yes, thank you, your Honor.

7 BY MS. GAMBINO:

8 Q. Mr. Uchino, is this the photograph that we have
9 been talking about?

10 A. Yes, that's correct.

11 Q. And do you know -- do you recognize the
12 location where this photograph was taken?

13 A. If you take a look at the caption in this
14 photograph, it says S 50, November the 2nd. In front of
15 the number six pipe machining device for AC pipes. So I
16 can tell this was taken inside of the plant. But if you
17 ask me if I ever got inside of the plant, no, because when
18 I joined the Kubota Corporation the plant was already
19 gone, so I never had a chance to walk inside of the plant
20 myself.

21 Q. Do you recognize any of the people in this
22 photograph?

23 A. No, I don't know any of them.

24 Q. Okay. Thank you.

25 A. Some of them look younger than I am.

26 Q. Do you know why Kubota closed the plant on
27 November 2nd, 1975?

28 A. Yes.

1 **Q. And what is the reason?**

2 **A.** There are three main reasons: The first reason
3 is a domestic reason, also known as the Japanese national
4 road issues -- issue. In Japan, most of the water pipes
5 were buried under national road, which were facilitated by
6 Ministry of Construction. Back then, Japan was in
7 industry of growth time. It was after World War II ended,
8 so Japan was trying to rebuild, therefore national roads
9 were expanding and consequently underneath of these roads
10 AC pipes were buried. However, because the amount of the
11 traffic increased, and the weight of each truck increased,
12 AC pipes couldn't bear these heavy traffic as well as the
13 amount of -- excuse me, weight of the trucks anymore, and
14 they started to burst under the national road, and that
15 happened quite often.

16 As a result, Ministry of Construction made a
17 decision that they were no longer using AC pipes, quote
18 water supply pipes, which were buried underneath of the
19 national roads, which was a big problem for AC pipe
20 manufacturers. Everybody tried to create stronger AC
21 pipes so that our demand would have continued, but we were
22 unable to do so. Consequently, the demand for the AC
23 pipes in the domestic Japanese market decreased
24 significantly. That was the first reason.

25 The second reason was the issue of U.S. dollar
26 and the Japanese Yen exchange rate. Upon December of
27 1971, the dollar/Yen ratio was fixed. A dollar was worth
28 360 Yen. Dollar was very strong compared to Japanese Yen.

1 But in December of 1971, the fixed rate was removed and
2 changed the variable exchange rate. All of a sudden, the
3 dollar/Yen ratio changed from 360 to 308, and then down to
4 200, meaning that Japanese Yen became suddenly very strong
5 against the U.S. dollars. This was not a good news for
6 Japanese export companies who were trying to sell goods in
7 the United States, because all of a sudden we lost our
8 competitive edge by 20 percent or more.

9 On top of that, in May of 1972, the U.S. agency
10 ITC, made a decision that if you choose to export your AC
11 pipes in the United States, any Japanese AC pipe
12 manufacturers has to pay dumping duty, because ITC decided
13 that Japanese AC pipe manufacturers were pricing their AC
14 pipes much lower than the price of U.S. AC pipe
15 manufacturers; therefore, we lost our competitiveness by
16 the strong Japanese Yen phenomena, on top of that, we have
17 to pay duty due to the decision made by ITC. Because of
18 this, after May, 1972, realistically it was next to
19 impossible for us to export our goods to the United
20 States.

21 The third reason was the Japanese government
22 revising the existing law. In this law, which was revised
23 on September the 30th, 1975, the Japanese government
24 suggested a possible connection between asbestos and
25 cancer. This was announced on September 30th, 1975, and
26 became effective October 1st, 1975. We made the decision
27 of closing our AC pipe plant long before this, with other
28 reasons, but this revision and the position of asbestos

1 could be connected to cancer made our decisions even
2 firmer, that this is a business we need to stop. So, with
3 all these reasons, we stopped manufacturing our AC pipes
4 at our plant in November '75.

5 Q. Thank you.

6 Mr. Uchino, do you know where Kubota obtained
7 the asbestos fibers that it used in its AC pipe?

8 A. Yes, I do.

9 Q. Okay. And where was that?

10 And do you know?

11 THE COURT: Excuse me, she needs to tell us the
12 answer.

13 MS. GAMBINO: Thank you.

14 THE WITNESS: We purchased our asbestos fibers
15 by Johns Manville through a trading company called Tokyo
16 Kogyo Boeki Shokai. Tokyo, T-o-k-y-o. Kogyo, K-o-g-y-o.
17 Boeki, B-o-e-k-i. Shokai, S-h-o-k-a-i.

18 BY MS. GAMBINO:

19 Q. Thank you. Do you know if Johns Manville ever
20 provided any warnings to Kubota Corporation when it was
21 providing this fiber for the AC pipe?

22 A. No, I don't. At least -- at least what I
23 understand is that they did not provide us anything before
24 1975, but I don't know the details.

25 Q. Mr. Uchino, yesterday Mr. Bratt asked you if
26 Kubota ever put warnings on AC pipes sold in the United
27 States, and your answer was that they did not. Do you
28 know why they didn't put warnings on their pipe?

1 A. Because we didn't think that the end users of
2 Voss needed to cut our pipes at their work site; that was
3 the reason why we didn't provide warnings. As I explained
4 to the counsel yesterday, we provided many different types
5 of length amongst our products so that they are easy to
6 use by the users. We provided full length, half length
7 and quarter length.

8 As a matter of fact, this product is so easy,
9 because you don't have to cut them, was one of the sales
10 point of our products. We really didn't expect the end
11 users to cut our products at their work site.

12 Also, our thinking was, let's just say once in
13 a blue moon if anyone needed to cut these pipes at their
14 work site, it would be done outside, it's not going to be
15 done inside; therefore even if they needed to cut, even
16 though it would be very rarely, the amount of exposure
17 toward asbestos would be so minimum that we didn't need to
18 warn them. That was our reasons.

19 Q. Mr. Uchino, did Kubota Corporation ever send
20 any technical support to the United States to work with
21 its clients, such as East Bay Mud, and to trouble shoot
22 any problems that those clients might have with their
23 pipe?

24 A. No, Kubota Corporation did not provide such
25 support to the end users.

26 Q. Mr. Uchino, yesterday Mr. Bratt asked you about
27 some legislation titled the 1960 Pneumoconiosis Act. Are
28 you familiar with that act?

1 A. Yes.

2 THE COURT: The year again, counsel?

3 MS. GAMBINO: I'm sorry, it was the 1960
4 pneumoconiosis.

5 THE COURT: You said it --

6 THE WITNESS: Yes, I do.

7 BY MS. GAMBINO:

8 Q. And just very briefly, can you tell us, just
9 generally, what that act said?

10 A. This act was created mainly through product
11 mine workers who are working in coal mines. They were
12 exposed to coal dust in a significant way, and many of
13 these mine workers were having many lung disease,
14 including tuberculosis. This act was provided --
15 providing to protect these mine workers, specifically
16 requiring the employers to provide regular physical exams
17 and make sure that mine workers wear appropriate
18 protection gears and so forth.

19 Q. Does this act specifically mention any
20 particular mineral dust?

21 A. Yes. If you look at the detailed attachment
22 portion of the law, yes, you can see the list.

23 Q. And do you remember any of the dusts that are
24 identified?

25 A. I remember that asbestos was included.

26 Q. Any others that you remember?

27 A. I apologize, I can't remember while I'm sitting
28 here today.

1 Q. All right. Mr. Uchino, if my understanding is
2 correct, this was an act that was intended to protect
3 workers and employees; is that correct?

4 A. Yes.

5 Q. And did Kubota Corporation follow the
6 requirements of this act?

7 A. Yes, it did.

8 Q. And what did it do to follow the requirements?

9 A. Kubota Corporation provided dust masks for the
10 workers who were in the working environment where dust
11 were flying in the air, to protect them from inhaling
12 these dusts. In addition, Kubota Corporation made sure
13 that these workers would would get regularly scheduled
14 health examinations. In addition, to make sure these are
15 going to be permeated throughout the company, I believe it
16 was around 1962, Kubota Corporation started to publish a
17 newsletter entitled "Safety and Hygiene Monthly Report."
18 Using this newsletter, Kubota Corporation told its workers
19 and employees the importance of wearing protection gears
20 and also importance of getting regular health
21 examinations.

22 Q. Mr. Uchino, I'd like to direct your attention
23 to what's been marked for identification as Exhibit 7023.

24 THE COURT: Just for your information, at
25 quarter to the hour we'll take our break.

26 MS. GAMBINO: Thank you, your Honor.

27 BY MS. GAMBINO:

28 Q. Mr. Uchino, have you seen this document before?

1 A. Counsel, did you say 7023?

2 Q. Yes, 7023.

3 A. Yes, I have it in front of me.

4 Q. Okay.

5 A. I have the document in front of me and I have
6 seen this before.

7 Q. Thank you. And that is a four-page document
8 that's Bate stamped through page four.

9 Mr. Uchino, can you just briefly tell me what
10 is this document?

11 A. I think it's an ad for a pipe cutter.

12 Q. And is there a date on this document?

13 A. I'm sorry, I couldn't hear you.

14 Q. Is there a date on the document?

15 A. Yes, there is a date on this document.

16 Q. And can you tell me what that is?

17 A. The date is February the 3rd, 1975. The ad
18 placed on the paper issued February the 3rd, 1975.

19 MS. GAMBINO: Your Honor, I'd like to offer
20 these documents into evidence.

21 THE COURT: Very well, they're admitted.

22 MS. GAMBINO: Thank you.

23 (Defendant's Exhibit 7023
24 was received in evidence.)

25 MS. GAMBINO: And may I publish them?

26 THE COURT: Yes.

27 MS. GAMBINO: Thank you.

28 BY MS. GAMBINO:

1. Q. Mr. Uchino, on the first page of this Exhibit
2 7023, there are, it looks like three drawings. Do you --

3 THE COURT: Can you turn it?

4 THE WITNESS: Yes, I see three drawings.

5 BY MS. GAMBINO:

6 Q. Do you know what those drawings depict?

7 A. May I stand?

8 THE COURT: Yes.

9 BY MS. GAMBINO:

10 Q. Okay. What are they? If you could explain to
11 the jury, please.

12 A. This indicates different types of cutters for
13 cutting your pipes. I believe that this is a patented
14 technology held by the U.S. based company called Reed.
15 What this is, is that the Reed brand cutter was sold in
16 Japan, trying to introduce this cutter to the Japanese
17 users, basically saying that if you needed to cut AC
18 pipes, you can use a cutter like this, and recommending
19 you to use a cutter like this by using this ad.

20 Q. And Mr. Uchino, now I'm going to show you a
21 document, it's page -- it's Bate stamped number four, in
22 that same exhibit. And obviously -- well I'll ask you.
23 Is this a document that's in Japanese?

24 A. Yes.

25 Q. And can you tell me what's depicted in this
26 document, in the diagram, or the photograph -- drawings?
27 Excuse me.

28 A. This is also an ad introducing several

1 different types of pipe cutters. From the left the rotary
2 style cutter is ideal for cutting cast iron pipes, step
3 pipe and so forth, while the middle one, titled hinge
4 cutter, is ideal for cutting cast iron pipes and others.
5 And the very right one, which is called Reed ACC/PCC
6 cutter is ideal for cutting AC pipes. That is the summary
7 of this ad.

8 Q. Mr. Uchino, the drawing that's for ACC slash
9 PCC pipes. I'm sorry. PVC pipes, can you tell me, is
10 that a power tool?

11 A. No, it's not a power cutter.

12 Q. Are these all hand tools that are depicted in
13 this exhibit?

14 A. They are all hand tools. At least back then in
15 Japan, if you must cut cutters (verbatim) at work site,
16 everything was done manually, and these tools were used.

17 THE COURT: We'll take our recess. 15 minutes.

18 MS. GAMBINO: I only have two questions. I
19 guess it doesn't matter.

20 THE COURT: Did you want to just finish up?

21 MS. GAMBINO: If I may.

22 THE COURT: We'll finish up one of the
23 questions on this exhibit, and that's fine.

24 BY MS. GAMBINO:

25 Q. Mr. Uchino, do you know if any of the agencies
26 that visited Kubota from the United States, or that used
27 the Kubota pipe in the United States ever advised Kubota
28 of any health hazards resulting from working with the AC

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pipe?

A. Yes, I do. And, no, that didn't happen at all.

Q. And in your capacity as manager of the Legal Department at Kubota, have you become familiar with the Japanese laws and regulations related to asbestos?

A. Yes. As the head of the Legal Department, I became very aware of Japanese laws and regulations concerning asbestos very well.

Q. Do you know if the use of asbestos in products, in the manufacture of products has ever been banned in Japan?

A. Yes, I know what happened in Japan.

Q. And can you tell me when asbestos was banned for the use in the manufacture of products?

A. We went through three different phases. In 1995, the blue asbestos, also known as crocidolite, and the brown asbestos, these two were banned. In 2004, all of the construction materials containing asbestos, including roofing and siding materials were banned. In 2006, all of the products containing asbestos were banned, except for very small amount of exceptions.

THE COURT: Okay. I think I just have to recess now.

MS. GAMBINO: Thank you, your Honor.

THE COURT: We'll take a recess until five minutes after the hour.

And do not discuss the case or form or express any opinions. We'll take our recess. Thank you.

(Whereupon, the jury enters the courtroom.)

THE COURT: Ms. Gambino, I think you made it clear that that happened to be your last question?

MS. GAMBINO: Yes, your Honor. I have no more questions for Mr. Uchino.

Thank you, Mr. Uchino.

THE COURT: I think I heard from other defendants that you have no other questions?

MS. VOTAW: No questions, your Honor.

MR. BERFIELD: No questions.

MR. BRATT: I started the day with a few questions, and now I have a baker's dozen, a few little areas I want to cover at the end. Okay.

---oOo---

RE CROSS EXAMINATION UNDER 776

BY MR. BRATT:

Q. Mr. Uchino, you've been testifying both when I asked questions and when counsel has asked questions about Kubota's manufacturer of asbestos cement pipe, the decision that Kubota made to not warn and that Kubota workers were getting sick with mesothelioma.

But my first question I want to clarify is, sir, you have no expertise with asbestos. Is that true?

MS. GAMBINO: Objection. Overbroad.

THE COURT: Sustained. Just make it more precise.

BY MR. BRATT:

Q. You've never been specially trained in asbestos,

1. sir. Is that true?

2. A. That's correct.

3. Q. You're not a doctor. Is that true, sir?

4. A. Correct. I'm not a physician.

5. Q. You're not the person within the company that's
6. responsible to treat Kubota employees that have had
7. asbestos diseases. Is that true?

8. MS. GAMBINO: Objection. Lacks foundation.

9. THE COURT: Sustained, but I think he's made
10. clear he's a lay person in these areas.

11. BY MR. BRATT:

12. Q. Sir, you're not a trained industrial hygienist.
13. Is that true?

14. A. No, I'm not an industrial hygienist.

15. Q. And so you're not the person within Kubota that
16. is responsible for making sure that employees are safe.
17. Is that true?

18. A. I'm sorry, what do you mean by employees being
19. safe?

20. Q. You're not the person within Kubota that has
21. responsibility to make sure that employees are safe from
22. hazardous dust like asbestos. True?

23. A. True, I do not have a responsibility.

24. Q. You've worked for many years in Kubota's legal
25. department to help keep Kubota out of legal trouble. Is
26. that correct?

27. THE COURT: It's argumentative.

28. MS. GAMBINO: Objection. Argumentative. Thank

1 you.

2 THE COURT: He's described his duties. You may
3 continue.

4 BY MR. BRATT:

5 Q. You've worked for many years in Kubota's legal
6 department. Isn't that true?

7 A. Yes, it's true.

8 THE COURT: When I sustain the objection, it
9 means just disregard the question and just move on to the
10 next one. And when I overrule an objection, it's not a
11 comment on the evidence either. We just get the answer.

12 BY MR. BRATT:

13 Q. Now, Mr. Uchino, in your entire life's history,
14 you have never worked in the field with your hands
15 installing pipe. Is that correct?

16 A. That is true. I've never done that before.

17 Q. And you've never installed any asbestos pipe.
18 Is that true?

19 A. That's correct.

20 Q. And you've never been trained on how to properly
21 install pipe. Is that true?

22 A. Correct, I never received a training like that
23 before.

24 Q. And you're not a trained civil engineer who
25 would make any decisions on how to design or install
26 underground water and sewer piping. Is that true?

27 A. That's correct.

28 Q. You've been trained in law. Correct?

1 THE INTERPRETER: Did you say been trained or
2 have not?

3 BY MR. BRATT:

4 Q. You have been trained in law. Is that correct?

5 A. Yes, I have trained with regards to Japanese
6 laws.

7 Q. I want to refer your attention to an exhibit
8 that's been entered into evidence, 7023, and it's behind
9 you on the screen.

10 Are you familiar with this document?

11 A. I have seen this before.

12 Q. Now, in America we like power tools.

13 THE COURT: Just ask a question.

14 BY MR. BRATT:

15 Q. Did -- did you ever or did Kubota ever send this
16 advertisement or this piece of paper to anyone that was
17 buying the pipe, the asbestos pipe in America?

18 A. I can't be for sure because I don't know the
19 details, but I don't believe so.

20 THE COURT: This is just a cautionary note. I
21 don't want to interrupt, but when counsel said we in
22 America like power tools, that's not a question.

23 You'll ask the next question.

24 MR. BRATT: Thank you, your Honor.

25 THE COURT: You're certainly welcome.

26 BY MR. BRATT:

27 Q. Now, you admitted when you were answering
28 questions when Ms. Gambino was asking the questions that

1 Kubota understood that may be rare but that pipe would be
2 cut. Is that true?

3 A. No, I do not admit it, but at the same time I
4 cannot say never, because there is some possibility out
5 there that I cannot deny. But what I wanted to convey to
6 her was that we didn't think about a situation where the
7 workers would cut our pipes at work site.

8 Again, if you say are you certain the
9 possibility is zero, I can't say zero. That's why I said
10 the way I did.

11 Q. What did Kubota do to find that information out?

12 MS. GAMBINO: Objection. Vague.

13 THE COURT: Just ask him if Kubota --

14 MR. BRATT: I'm sorry, your Honor.

15 THE COURT: I'm saying you may ask him if Kubota
16 made special inquiry or if they did something.

17 BY MR. BRATT:

18 Q. Did Kubota do anything in particular to find out
19 what workers were doing with pipe on the field?

20 A. We did not conduct any specific researches
21 concerning how the workers working in the field in the
22 United States during the time we were exporting our AC
23 pipes up to 1975.

24 Q. And that's because Kubota never sent any
25 technical support to the US to work with the people
26 buying the pipe over here. Correct?

27 MS. GAMBINO: Objection. Argumentative and
28 vague.

1 THE COURT: Sustained. Those are two separate
2 questions.

3 BY MR. BRATT:

4 Q. Did Kubota ever send any technical support, any
5 person from Kubota over to the United States to observe
6 any work that was being done with its pipe?

7 A. I remember there was somebody from Kubota
8 Corporation went to visit Voss between the time when we
9 were exporting our AC pipes up to 1975.

10 But, counsel, there is something I need you to
11 remember. We were talking about 1950s 1960s. It wasn't
12 too long ago when World War II finally was over and Japan
13 was basically destroyed. We were on our way to moving
14 back to where we were. But we were poor, and when you
15 are poor, getting a foreign currency was very difficult.
16 But without getting foreign currency, you were unable to
17 go overseas. Back then going to the United States wasn't
18 this easy. It was extremely difficult thing to do.

19 Please remember that, but somehow someone from
20 Kubota was lucky enough to be able to visit Voss, but
21 whether or not he made an additional trip to visit
22 somewhere else after Voss's office, I don't know.

23 MR. BRATT: Your Honor, move to strike
24 non-responsive portions.

25 THE COURT: Request granted. You may proceed.

26 MR. BRATT: Thank you, your Honor.

27 Q. Is it true that you have not seen any
28 documentation showing that Kubota was visiting job sites

1 where the pipe was being installed in America?

2 THE INTERPRETER: I'm sorry, could you repeat
3 that question for me please?

4 MR. BRATT: Sure.

5 Q. Is it true that you've seen no Kubota documents
6 that would indicate that Kubota was sending technical
7 support to observe pipe being installed in America?

8 A. It's true.

9 Q. In the manufacturing process is it also true
10 that the pipe would be cut by Kubota?

11 A. Yes, yes, that is true. Majority of the time
12 pipes were cut by Kubota.

13 Q. And it was cut with a power saw. Is that true?

14 A. No, it wasn't the power saw. We were
15 manufacturing them. So when you are manufacturing pipes,
16 you really don't need to cut them that often. So the
17 frequency was small to begin with. And if we needed to
18 cut them, it was done manually.

19 Q. How do you know that?

20 A. Because people who were engaging in that work
21 told me.

22 Q. Kubota didn't use this to put in the
23 manufacturing plant, did it?

24 Right behind you, sir.

25 A. No, we don't, because this was designed for the
26 workers to use at work sites. Not manufacturing plant.

27 Q. You used power saws at the manufacturing plant.
28 Right?

1 MS. GAMBINO: Objection. Argumentative. That
2 question has been asked and answered.

3 THE COURT: You may ask that question again.
4 BY MR. BRATT:

5 Q. You didn't use the manual saw that we just
6 showed you; Kubota used power saws. Isn't that true?

7 A. No.

8 Q. But you've got no documents that you can show
9 this jury to support that. Is that true?

10 A. Correct, I do not have any evidence that I can
11 show the jury to support my statement.

12 Q. Thank you.

13 Sir, if pipe was being installed in the field
14 and it came to a point in the road where it had to turn
15 and the space between where it had to turn and where the
16 last pipe ended was different than the sizes of the
17 Kubota pipe --

18 So I'm going to put this in front of you and
19 this may help.

20 THE COURT: Just one second. You put something
21 on the board to try to illustrate a question. Correct?

22 MR. BRATT: Yes. I drew this.

23 THE COURT: Excuse me, let's find out if defense
24 has an objection.

25 MS. GAMBINO: I'm sorry, your Honor. May I have
26 the question read back?

27 MR. BRATT: I was leading my question.

28 THE COURT: Let me pause and explain. Counsel

1 is going to ask a new question... He's placed something on
2 the board that is not in evidence but to illustrate his
3 question and to help get an answer.

4 If you can answer yes or no, fine. If it
5 requires elaboration, feel free to do so. But the
6 general caution is to focus on the question and respond
7 only fairly to the question. If Ms. Gambino wants to
8 follow up, she can.

9 Okay? That's the procedure. Thank you.

10 BY MR. BRATT:

11 Q. Sir, if pipe was being installed and the area
12 between where the pipe ended and where it needed to turn,
13 if that was not 13 feet, if that was not six foot six
14 feet, and if that was not three foot three feet, is that
15 the situation that Kubota understood that pipe would be
16 cut in the field by workers?

17 MS. GAMBINO: Objection. Improper hypothetical.

18 THE COURT: I'll let you -- through the
19 interpretive process, it's a challenge, but I'll let you
20 follow up. You may go ahead you may answer.

21 THE WITNESS: May I stand?

22 THE COURT: Of course.

23 THE WITNESS: First of all, you only listed
24 three length but there were quite a few more available:
25 3.3, 4, 5, 6.6, 8, 10, 13, to name a few. And in the
26 actual field what is normally done is not the way
27 depicted here. You know the distance even before you
28 came to this close, and you measure it so that you would

1 put smaller one, a little shorter one, a little longer
2 one, so that without cutting the actual pipe you can
3 actually reach from one end to the very end. That's the
4 normal procedure.

5 And also 13 feet, for example, is not exactly 13
6 feet. There was some tolerance. So you could play with
7 different length to make sure that they will fit in the
8 length that you needed to fill.

9 However, even if you play with all these
10 different length from the different starting point, the
11 different end we were thinking, however, there might be a
12 very minor situation where none of these playing around
13 would work. That's what I meant by I cannot say zero
14 possibility.

15 BY MR. BRATT:

16 Q. And Kubota doesn't have any evidence today, a
17 document or anything, to show that it went and observed
18 the companies that were installing the Kubota pipe in
19 America to see if that's how they were doing things.
20 True?

21 MS. GAMBINO: Objection. Asked and answered.

22 THE COURT: Yes, he's answered that two or three
23 times, counsel. Sustained.

24 MR. BRATT: Thank you, your Honor.

25 Q. Sir, you indicated that in response to a
26 question from Ms. Gambino that when it was cut in the
27 field, that the -- that Kubota expected the exposure to
28 be minimal. Do you remember that testimony?

1 A. Yes, I remember that.

2 Q. Kubota never did any tests to determine how much
3 exposure would be released when it was cut. Is that
4 true?

5 A. Correct.

6 Q. Kubota never hired any other company that had
7 expertise in that to determine if you cut asbestos cement
8 pipe, how much fiber would be released. Is that correct?

9 A. That's correct. Before we stopped manufacturing
10 and selling of our asbestos cement pipe in 1975, we
11 didn't do that.

12 Q. Kubota did hire other companies to certify its
13 pipe so it could sell it. Is that true?

14 A. I'm sorry. I didn't understand your question.

15 THE COURT: Will you read back the question?

16 We'll ask the court reporter to read the
17 question, and if it's not understood, I'll ask counsel to
18 clarify.

19 (Record read.)

20 THE WITNESS: We did attach certifications, yes.

21 BY MR. BRATT:

22 Q. None of those certifications that you talked --
23 let me strike that and start over.

24 None of the certifications that you talked to
25 the jury about yesterday dealt with any certification
26 about safety and health. Is that true?

27 A. That's correct, there was no item concerning
28 safety or health in the specifications attached to our

1 products.

2 Q. You also mentioned yesterday that in 1979 Kubota
3 started placing warnings about hazards of asbestos in the
4 manuals of its roofing products. Is that true?

5 A. Yes, but I think I said somewhere around 1979,
6 because I don't recall. I didn't recall the exact era.

7 Q. But they were in manuals, not on the products.
8 Correct?

9 A. Correct. We didn't apply a warning on the
10 product itself.

11 Q. Now, I want to move on to the 1960 law about
12 mineral dust. Okay?

13 A. Yes.

14 Q. Kubota provided dust masks to its workers in
15 response to that law to protect them against asbestos.
16 Correct?

17 A. Yes. The company provided dust masks for all of
18 the workers regardless what they were doing, if they are
19 working on the area where mineral dust or flying in the
20 air.

21 Q. Kubota never told consumers after 1960 or any
22 time up until '75 when it made asbestos pipe that they
23 should wear a mask. Is that correct?

24 A. If you are talking about workers who are working
25 on the actual work site, no, we didn't tell them to wear
26 masks.

27 THE COURT: His question was about consumers.

28 THE WITNESS: Your Honor, because the product

1 was asbestos cement pipes, the general consumers were not
2 really general -- the general consumers in this capacity
3 was actually construction workers. That's what I meant
4 by actual workers working on the construction site. But
5 if you'd like to expand it to anybody else under the
6 category of consumer including them, we did not provide
7 any warnings that they must -- they should wear masks.

8 THE COURT: Thank you. I don't -- it's not my
9 function to examine. I was just following up on
10 counsel's question related to the word "consumer," and
11 counsel may ask other questions.

12 MR. BRATT: Thank you, your Honor.

13 Q. Kubota didn't warn anyone to wear a mask when
14 handling or working with its asbestos cement pipe ever.
15 Correct?

16 MS. GAMBINO: Objection. Argumentative.

17 THE COURT: Counsel, would you clarify, because
18 you did ask a series of questions related to people
19 working at the Kubota facility when you talked about the
20 masks. Perhaps I misunderstood your question.

21 MR. BRATT: Well, can I have it read back, your
22 Honor, because I think I said -- all right. Let me
23 rephrase.

24 THE COURT: I think you said Kubota didn't
25 notify anybody, and I was just trying to avoid the
26 repetition of one area. But please proceed.

27 MR. BRATT: Thank you.

28 Q. Kubota never placed a warning on its pipe to

1 notify anyone who might be around it, handling it, or
2 working with it at any time. Is that correct? And this
3 is in regards to wearing a mask to protect against
4 asbestos.

5 A. Although I looked for documents indicating that,
6 I was unable to locate any documents reflecting that.

7 Q. Kubota manufactured water pipe all the way back
8 to the 1800s. Is that true?

9 A. Yes. I was told it started its manufacturing
10 work in 1893.

11 Q. And they made, back then, ductile iron. Is that
12 correct?

13 I'll rephrase.

14 The water pipe they made back in the 1800s was
15 made of ductile iron. Correct?

16 MS. GAMBINO: Objection. Lacks foundation.

17 THE COURT: If he knows, he can answer.

18 MS. GAMBINO: Thank you, your Honor.

19 THE WITNESS: To be specific, no. Because
20 ductile iron is only one type of cast irons which wasn't
21 became available until 1950s. But if you are asking me
22 the question if we were using some kind of cast irons,
23 yes, that's what we were using in 1800.

24 BY MR. BRATT:

25 Q. Does Kubota today make cast iron or any iron
26 type of water pipe?

27 A. Yes.

28 Q. And throughout the '60s and '70s, did Kubota

1 make iron pipe for use in water systems?

2 A. Yes, we did.

3 Q. Did Kubota, in its whole history of making pipe,
4 did they make any other types of pipe other than iron and
5 asbestos for water systems?

6 A. Yes.

7 Q. What kinds?

8 A. We also manufacture polyvinyl chloride pipe,
9 also known as PVC pipes, as well as polyethylene pipes.

10 Q. And what years did Kubota make PVC pipes for use
11 in water systems?

12 A. It was around 1954 or 1955 I'm afraid.

13 Q. And do they still make PVC today?

14 A. Yes, but they are made by one of the Kubota
15 subsidiary companies.

16 Q. Was PVC pipe made by Kubota or one of its
17 subsidiaries in the '60s and '70s?

18 A. Yes.

19 Q. Sir, yesterday you mentioned that there may have
20 been, in Kubota's opinion, some problems with the
21 epidemiological studies that were done related to the
22 neighborhood around the Kubota asbestos cement pipe
23 factory.

24 Do you recall that testimony?

25 A. I remember my saying that, yes.

26 Q. Kubota acknowledges that both men and people
27 living in the neighborhood of its asbestos cement pipe
28 factory have died of mesothelioma. Is that true?

1 MS. GAMBINO: Objection. Beyond the scope and
2 asked and answered.

3 THE COURT: It goes beyond the scope of the
4 exam. We can take this up, so you can move on until
5 noon, and I'll talk to you informally, and perhaps we can
6 revisit that, if appropriate.

7 MR. BRATT: Thank you.

8 MS. GAMBINO: Thank you.

9 THE COURT: You can ask a new question. If
10 there's an issue to resolve, I'll do it at lunch time.

11 MR. BRATT: Okay.

12 THE COURT: Because I assume do you have
13 questions that will go after noon?

14 MR. BRATT: Yeah. I think now would be a good
15 time to talk about this.

16 THE COURT: We'll take a recess now until 1:30
17 please. I'll ask counsel to remain and spend a few
18 moments before I let you go for lunch.

19 Thank you very much.

20 (Whereupon, the jury leaves the courtroom.)

21 MR. BRATT: Would it be appropriate for the
22 witness to leave the room for the discussion?

23 THE COURT: That's fine.

24 (Witness leaves courtroom.)

25 THE COURT: Okay. Let me just tell you what I
26 was thinking about, and that's why I'm glad to have a
27 discussion on this.

28 Ms. Gambino, I'm just going to say you can be

1 seated, you know.

2 Objections come, and you make your best effort
3 at the time, and we'll explore it now at this moment.

4 I know that I don't recall when there was an
5 examination earlier that it was put to the witness about
6 epidemiological study as opposed to studies more
7 generally. I don't know that we've heard testimony that
8 there were epidemiological studies. So that shouldn't be
9 referred to unless we get evidence.

10 But I do recall generally his testimony saying
11 that within the -- as I recall it, generally when asked
12 about this that within the Kubota Corporation they
13 seemed, it's my word, not his, miffed that it's a factory
14 city, he said, and it seems all focused on Kubota, and
15 there was a lot of places with asbestos and so forth.

16 And so I thought that there had been testimony
17 about the -- and acknowledged and not disputed that there
18 was a knowledge of a health consequence associated with
19 asbestos and so forth. So when you asked about the
20 admission, I didn't know if that would open the door to
21 the litigation or claims that had been touched upon.

22 So -- but what was the -- what's the gist of
23 your objection?

24 MS. GAMBINO: Your Honor, my only objection was
25 the question asked actually an identical question to what
26 was asked yesterday. Yes, I think the question was asked
27 that did Kubota acknowledge that there were people around
28 the plant that were getting mesothelioma, and he said

1 yes. So that was really my very specific objection just
2 to that particular question.

3 If we're going to go into questions about the
4 study, I don't have a problem with it.

5 THE COURT: Okay.

6 MR. BRATT: Your Honor, the testimony by the
7 witness essentially took this whole issue related to
8 people around the plant becoming particular, and he's
9 reflected it by saying that there's other causes and
10 other people, other companies that are at cause. It's
11 not Kubota's responsibility, at least entirely. And in
12 response I intend to inquire of him the fact that Kubota
13 has acknowledged and accepted responsibility related to
14 deaths that have occurred in that neighborhood of both
15 men and women of mesothelioma, and it's important because
16 the jury right now has information from him that it
17 wasn't us; it was others.

18 And --

19 THE COURT: I didn't -- I didn't really draw
20 that. I think there could be a variety of contributing
21 causes, and I haven't seen the study, but I think he was
22 saying -- that wouldn't take away the possibility of that
23 being the substantial cause. There could be other
24 contributors.

25 MR. BRATT: I think it's important to inquire
26 with the witness about Kubota's accepting of that
27 responsibility and acknowledgement of the deaths, and,
28 you know, in response to the cross-examination or, I'm

1 sorry, the direct examination on that subject.

2 THE COURT: Let me just see if you can work this
3 out to your satisfaction.

4 It is true that you got into an area when the
5 cross-examining if you open an area a little bit, it
6 usually can be more fully explored. And so I'm not sure
7 if in response to a brief line of inquiry that he would
8 say yes, there were people in the area. And I thought
9 he'd said it, but we acknowledge that, you know, we've
10 some responsibility for that and not dance around on it,
11 but that would -- and then you wouldn't have to go over
12 all of those other things that he already said about the
13 -- their view of the study.

14 MS. GAMBINO: I think I agree with, your Honor.
15 I think my objection is very specific to this particular
16 question. It was based on a question that was asked
17 identical to one asked yesterday.

18 THE COURT: Did you ask that yesterday?

19 MS. GAMBINO: No. Mr. Bratt asked it yesterday.

20 THE COURT: And then the question is, if you
21 asked it and got a clear answer, it's cumulative.

22 MS. GAMBINO: Exactly.

23 MR. BRATT: I don't believe this is cumulative
24 because it was clarified by counsel and the witness
25 related to the fact that they, in fact, aren't accepting
26 responsibility for all of the people that have died.
27 Where, in fact, we have admissions by the company that
28 they did. And so that's why --

1 THE COURT: All the people have gotten --

2 MR. BRATT: Well, we have admissions by the
3 company that at least 248 individuals they're responsible
4 for, and that's in the neighborhood. And 184 people
5 within the plant. And this is in their 2013 annual
6 report.

7 MR. JONES: And if I could just suggest really
8 quick over the break, I think we have the daily
9 transcript. So what we can do is check and see.

10 And my recollection is that this was a follow-up
11 from Ms. Gambino that elicited the testimony about other
12 factories in the area. If that's the case, that will let
13 us know if that's an open door situation or not.

14 THE COURT: Why don't you check it out and be
15 here around 1:30. We'll look at it. And it also gets
16 some understanding of how it can be argued.

17 Okay. Thank you.

18 (Lunch recess taken.)
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1:30 P.M.

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2 THE COURT: Okay. I was on a conference call,
3 so I'm a few minutes late. It's 22 minutes before the
4 hour. But when we left, there was a question about the
5 extent of the redirect, but it's really in the nature of
6 cross.

7 MS. GAMBINO: Your Honor, may I just say that
8 in the last couple minutes we were able to resolve our
9 differences, and I withdraw the objection.

10 THE COURT: Very good. I'm glad that worked
11 out. Thanks. Sweet reason for that. That's good.

12 So let's call the jury in.

13 MR. BERFIELD: We only worked that out because
14 you were late. In your imminent wisdom.

15 THE COURT: My experience.

16 MR. JONES: Your Honor, the only other matter
17 is the Ambler issue. I don't know if we want to take that
18 up now.

19 THE COURT: No, not now.

20 MR. JONES: We may want to brief that.

21 THE COURT: Before you brief that, let's talk
22 about it. It's getting late in the trial. I'll talk to
23 you this afternoon.

24 (Whereupon the jury enters the courtroom.)

25 THE COURT: We're all together, ready to
26 continue. Now, we're going to go forward, and we'll ask
27 Mr. Bratt to continue.

28 MR. BRATT: Thank you, your Honor. Thank you.

1 BY MR. BRATT:

2 Q. Mr. Uchino, Kubota Corporation has taken
3 responsibility for the deaths of people that lived in the
4 neighborhood around its asbestos cement pipe plant; is
5 that correct?

6 A. From the viewpoint of a CSR, Kubota Corporation
7 paid some money as a compensation money, but we did not
8 admit the correlation or relationship between our plant
9 and the deaths.

10 THE COURT: Was the matter resolved -- were
11 those matters resolved, then, to the satisfaction of the
12 parties? Were those matters then resolved to the
13 satisfaction of the parties, if he knows? Through a
14 settlement or agreement?

15 THE WITNESS: Yes, it's been settled.

16 THE COURT: Okay. Thank you.

17 BY MR. BRATT:

18 Q. And it's true that as of March 31st, 2013,
19 relief payments had been made to 248 individuals?

20 MS. GAMBINO: Excuse me, your Honor.
21 Objection. We had a motion.

22 THE COURT: Well, confer with each other. I
23 was not prepared to make rulings, but I think you said you
24 had discussions, and whatever you agree to is fine with
25 me.

26 This is probably -- if lawyers can work it out,
27 I let them work it out.

28 Okay. Please continue.

1 BY MR. BRATT:

2 Q. It is true, sir, that as of March 31st, 2013,
3 relief payments had been made by Kubota to 248 individuals
4 pursuant to the internal policy of the relief payment
5 system for the asbestos-related patients and the family
6 members of the deceased near the former Kanzaki plant; is
7 that correct?

8 A. I don't know the exact number, but it is true
9 that roughly 200 people have been compensated by Kubota
10 Corporation.

11 Q. It's true, though, that Kubota, in its annual
12 reports that it provides to its -- its owners, the people
13 that own stock in their corporation, that it acknowledges
14 248 individuals have died?

15 A. Because I don't have a copy of annual report in
16 front of me, I cannot really tell you the number you are
17 citing is accurate, nor inaccurate.

18 THE COURT: Let me ask counsel. Can this be
19 the subject of an agreement? I don't know if you, through
20 pre-trial discovery, have covered that document.

21 MS. GAMBINO: Yes, your Honor. It is
22 stipulated, 248 people.

23 THE COURT: That saves the time for proof.
24 Counsel, the parties agree that's beyond dispute, the
25 number is 248.

26 MS. GAMBINO: Your Honor, that's 248 in the
27 annual report, correct.

28 THE COURT: Yes. That's the answer to the

1 question: Is the number 248 in the annual report? You
2 agree that it is, correct?

3 MS. GAMBINO: That is correct. Thank you, your
4 Honor.

5 THE COURT: He wasn't denying it.

6 MS. GAMBINO: Right.

7 THE COURT: He just didn't remember the exact
8 number.

9 MS. GAMBINO: Yes, your Honor.

10 THE COURT: Thank you.

11 BY MR. BRATT:

12 Q. And Kubota has also taken responsibility for
13 184 people as of March 31st, 2013, of whom 163 are
14 diseased and 21 are undergoing treatment that were
15 suffering from asbestos-related diseases that were either
16 employees or former employees; is that correct?

17 A. If these are the numbers recorded in our annual
18 reports, then I don't argue with these numbers.

19 MR. BRATT: Counsel, can we stipulate to that
20 number from the annual report?

21 MS. GAMBINO: Yes, that is the number stated in
22 the annual report.

23 THE COURT: All right. Thank you. That's
24 accepted.

25 MR. BRATT: Your Honor, can I mark as Exhibit
26 503 an excerpt from the 2013 annual report and admit it
27 into evidence?

28 THE COURT: Show it to counsel.

1 Any objection?

2 MS. GAMBINO: Your Honor, I think that if
3 anything is going to be admitted, we would want the entire
4 annual report admitted.

5 THE COURT: The entire annual report?

6 MS. GAMBINO: Yes.

7 THE COURT: You may mark it for identification
8 now, and I'll deal with its admissibility later.

9 MR. BRATT: Thank you, your Honor.

10 MS. GAMBINO: Thank you.

11 (Plaintiff's Exhibit 503 was
12 marked for identification.)

13 THE COURT: I think in light of the
14 stipulation, it may be not necessary.

15 MS. GAMBINO: Yes, I'd like the entire report.

16 MR. BRATT: Thank you, sir. I have no further
17 questions.

18 THE COURT: Thank you.

19 Don't leave yet, sir. There may be a few more
20 questions. We'll find out.

21 Do you have any questions?

22 MS. GAMBINO: I'm sorry. All right. Thank
23 you.

24 THE COURT: I'm not rushing you. I just
25 assumed you might have some.

26 MS. GAMBINO: I'm just trying to get my
27 thoughts together there. Thank you.

28 REDIRECT EXAMINATION

1 BY MS. GAMBINO:

2 Q. Mr. Uchino, there was a question asked by
3 Mr. Bratt about the consumer of the asbestos cement pipe,
4 and I believe there was a little confusion. I just wanted
5 to ask you, do you consider asbestos cement pipe a
6 consumer product?

7 MR. BRATT: Objection, your Honor, relevance.

8 THE COURT: Overruled. To the extent there's
9 an objection that calls for a legal conclusion, of course
10 the witness is not instructing you on the law. I'm the
11 only judge that gets reversed for instructing on the law.
12 But he's permitted to answer that question as to what he
13 considered.

14 THE WITNESS: No, I don't consider them as
15 consumer product.

16 BY MS. GAMBINO:

17 Q. And why is that?

18 A. Asbestos cement pipes were used to carry waters
19 for drinking. I think it is true both in Japan and United
20 States, waters are something taken care of by the
21 government, maybe local government or municipal
22 government.

23 I really don't think people in the United
24 States is required to buy your own asbestos cement pipes
25 and to bury them in your backyard and to carry the water
26 into your house. I really don't think that's the case.

27 I think that it's taken care of by the
28 government, and the government order these pipe

1 installation works for appropriate contractors. That's
2 how usually these asbestos cement pipes were used.

3 So I really don't know if there are any
4 situations where one consumer purchases these asbestos
5 cement pipes, bury them in your own backyard, or anywhere
6 near your house, just like you would buy something from a
7 store and bring it to your home. I just can't foresee
8 that. That's why I don't call asbestos cement pipes as a
9 consumer good.

10 Q. Thank you.

11 Mr. Uchino, Mr. -- counsel, Mr. Bratt, asked
12 you if asbestos -- the asbestos cement pipe was cut by
13 power saws in the manufacturing plant, and you responded
14 that it was not, and you said that you had no documents
15 evidencing that, but that people that you had talked to
16 who engaged in that work had told you.

17 Can you tell me who those people were?

18 A. Mr. Junichi Koike who was responsible for
19 manufacturing all asbestos cement pipe at that time told
20 me that.

21 MR. BRATT: Objection, your Honor.

22 THE COURT: Do you have the spelling for the
23 court reporter?

24 THE INTERPRETER: Yes. Junichi, J-u-n-i-c-h-i.
25 Koike, K-o-i-k-e.

26 THE COURT: Thank you.

27 MR. BRATT: Go ahead.

28 ////

1 BY MS. GAMBINO:

2 Q. Mr. Uchino, Mr. Bratt also asked you if any of
3 the certifications that Kubota got for its pipe dealt with
4 any safety and health issues, and you said no.

5 Would you like to change or correct that
6 statement?

7 A. Yes, I'd like to make a correction. There was
8 no statement with regards to hygiene or health; however,
9 this certificate did include information about safety.
10 For example, there was a statement regarding the pressure
11 that the product could bear, including water pressure.
12 So, there were some informations concerning safety in that
13 certification.

14 Q. Mr. Uchino, Mr. Bratt asked you about the
15 different materials used by Kubota to make different types
16 of pipe, including iron pipe and PVC pipe. If Kubota was
17 making these other types using alternative materials, why
18 between 1954 and 1975 did Kubota make pipe that had
19 asbestos in it?

20 A. At the time, which was somewhere around 1954
21 and 1955, we wanted to develop lightweight pipes because
22 cast iron pipes were extremely heavy. Having that
23 concept, my understanding is that we started to develop
24 asbestos cement pipe in polyvinyl chloride pipes, known as
25 PVC pipes, at the same time. But whatever the reasons may
26 be, PVC pipe development wasn't going very well. They
27 just could not come up with the PVC pipes which were well
28 received by the market. So the development was sort of

1 being slowed, slowed down.

2 Meanwhile, asbestos cement pipes, which started
3 its development at the same time, was moving along its
4 development very smoothly. And right around 1960, a
5 little before -- a little after, the popularity for
6 asbestos cement pipes were extremely high.

7 However, as I explained to you before, it had
8 an issue which was weakness. It wasn't durable enough.
9 Once that issue became surfaced, the popularity toward
10 asbestos cement pipes became weaker and weaker, at least
11 in the Japanese market, and eventually the popularity just
12 became very, very little to the point we couldn't continue
13 doing it.

14 But, at the same time, the PVC pipe
15 development, which was stubborn for a while continued
16 slowly but steadily, and actually that was the product
17 which continued to be manufactured even after asbestos
18 cement pipes disappeared from the market.

19 **Q. Mr. Uchino, was asbestos cement pipe more**
20 **profitable than the other types of pipe?**

21 MR. BRATT: Beyond the scope, lacks foundation,
22 your Honor.

23 THE COURT: Overruled.

24 THE INTERPRETER: Counsel, did you say
25 profitable?

26 MS. GAMBINO: Profitable. Yes. Thank you.

27 THE WITNESS: No, it was not profitable at all.

28 MS. GAMBINO: Thank you, Mr. Uchino. I have no

1 more questions for you. Thank you very much.

2 Thank you, your Honor.

3 THE COURT: Are there any other questions?

4 MR. BRATT: Not from me, your Honor. Thank
5 you.

6 THE COURT: Anyone else?

7 MR. BERFIELD: No.

8 THE COURT: I propose to excuse the witness; is
9 that agreeable?

10 MS. GAMBINO: Yes, your Honor.

11 THE COURT: Sir, you are excused as a witness.
12 You are free to remain and watch or travel about or go
13 home. Whatever you want. Thank you, sir.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: Thank you, sir.

16 Will you be reading a deposition?

17 MR. BRATT: We will, but before that, I wanted
18 to complete a reading on the Kubota interrogatories that I
19 was reading from yesterday.

20 THE COURT: Fine. Just refresh our
21 recollection concerning the date.

22 MR. BRATT: Yes.

23 THE COURT: And my prefatory comment would be
24 is it correct that -- were these interrogatories in
25 connection with this proceeding?

26 MR. BRATT: These interrogatories were in
27 connection with a prior proceeding.

28 THE COURT: The complex litigation?

1 MR. BRATT: Yes.

2 THE COURT: Okay. Yesterday there was a
3 reading from written interrogatories which were propounded
4 or sent to Kubota in connection with the matter. And it
5 was read from yesterday, and you may read from it again.

6 MR. BRATT: Thank you, your Honor. And I read
7 from yesterday, it was the Defendant Kubota Corporation's
8 Amended Responses to General Order 129 Interrogatories to
9 Defendants from In Re: Complex Asbestos Litigation. And
10 they were signed on July 27th, 1998, but they were
11 verified by Takashi Aramori (ph), who is the manager of
12 the international legal section of Kubota Corporation on
13 July 22nd, 1998, in Osaka, Japan.

14 THE COURT: Verification is the process of a
15 personal attestation under penalty of perjury that the
16 information is true and correct to the best of the
17 person's knowledge.

18 MR. BRATT: And I had read Interrogatory Number
19 30 which dealt with whether or not they engaged in
20 particular asbestos-containing product business
21 activities.

22 I will now read from 31, and it says --

23 MS. GAMBINO: Excuse me. Can you give us one
24 second?

25 MR. BRATT: Sure.

26 "Interrogatory 31: If your answer
27 to any subparts of Interrogatory 30
28 regarding asbestos-containing products

1 is in the affirmative, then state: A,
2 the trade, brand name, and/or generic
3 name of such asbestos-containing
4 product marketed in any form or
5 quantity between 1930 and 1985."

6 And the answer given was: "Kubota asbestos
7 cement pressure pipe."

8 "B, the dates such
9 asbestos-containing product was first
10 placed on the market, including the
11 dates each such asbestos-containing
12 product was first marketed, either: 1,
13 on an experimental basis; 2, on a test
14 basis; or, 3, for sale."

15 The answer under B: "August 1954 in Japan."

16 "C, the dates such
17 asbestos-containing products ceased to
18 be produced or, 2, was recalled from
19 the market, if ever."

20 C, Number 1, 1975, and, 2, not
21 applicable.

22 D, a description of the chemical
23 composition of each such asbestos-containing
24 product, including the type and/or grade of
25 asbestos and/or asbestos fiber contained in
26 each such product, and the quantitative
27 percentage of asbestos or asbestos fiber in
28 each such product and all non-asbestos

1 components of the asbestos-containing
2 product, and if the chemical composition
3 changed over time, the inclusive dates of
4 each formulation."

5 Answer to D: "Chemical composition; PortLand
6 cement, silica and asbestos. Type of
7 asbestos fiber, crocidolite and chrysotile.
8 Grade of asbestos fiber, 4X, 4M, 4T, and 5D.
9 Upon information and belief, 5R may have
10 also been used. And percentage of asbestos,
11 18 percent.

12 E, a description of the physical
13 appearance and nature of each such
14 asbestos-containing product, including any
15 color coating, distinctive marking, and/or
16 logo either on the product or on the
17 packaging.

18 E, color was grey. Texture, slightly
19 bumpy with a feel similar to plasterboard.
20 Form, asbestos cement pipe. Physical
21 appearance and nature, pipe size, 4 inch,
22 size 6 inch, size 8 inch, size 10 inch, and
23 size 12 inch in diameter. Color coating,
24 grey.

25 Marking, see a later response, see
26 Response Number 38." And I'll read that
27 later.

28 "Type of asbestos fiber,

1 crocidolite and chrysotile. Grade of
2 asbestos fiber, 4X, 4M, 4T and 5D.
3 Upon information and belief, 5R may
4 have also been used. Intended use or
5 function, drinking water supply and
6 drainage. Type of work site, under the
7 sidewalk in a residential area."

8 F, a detailed description of the
9 intended use of such
10 asbestos-containing product including
11 any temperature limits for each such
12 use.

13 F, asbestos cement pressure pipe
14 for conveying liquids.

15 G, whether any such
16 asbestos-containing product was on the
17 U.S. Government's qualified products
18 list, and, if so, the inclusive dates
19 it was on such list.

20 G, unknown.

21 H, the name and address of the
22 supplier of raw asbestos used in each
23 such product and the time period of
24 such supply.

25 H, Japanese Trading Company.
26 Example, Tokyo, Kogyho, Boyeki, Shokai,
27 Limited."

28 I'll provide the spelling. It's Tokyo,

1 T-o-k-y-o. Kogyho, K-o-g-y-h-o. Boyeki, B-o-y-e-k-i.
2 Shokai, S-h-o-k-a-i. And then Limited. The time period,
3 1954 to 1975.

4 "And I, whether any of this
5 defendant's raw asbestos or
6 asbestos-containing products have at
7 any time been sold, shipped or
8 otherwise distributed to any company,
9 including power company or utility,
10 governmental agency or entity,
11 shipyard, distributor, refinery,
12 contractor, supplier, manufacturer,
13 premise owner, or occupant, ship owner,
14 or other premise or site in the
15 geographic area.

16 If so state: 1, the names of each
17 such company, governmental agency or
18 entity, shipyard, distributor,
19 supplier, manufacturer, refinery,
20 contractor, premise owner, or occupant,
21 ship owner, premise or site; 2, the
22 inclusive dates of each such sale,
23 shipment, distribution, use or
24 installation, and the amount, volume
25 and the trade or brand name of each
26 such asbestos-containing product sold;
27 and, 3, whether you have any records
28 indicating any such sale, shipment,

1 distribution, use, or installation,
2 and, if so, the name, address and job
3 classification of each such person who
4 currently has possession of such
5 records.

6 I, answer, Voss International
7 corporation, in parentheses, a distributor.
8 2, under I, unknown. And for 3 under I,
9 Kubota currently does not possess any such
10 records.

11 J, either: 1, attach all documents
12 evidencing the information sought in this
13 interrogatory and in subparts to your
14 answers to these interrogatories; or, 2,
15 attach discs containing such data; or, 3,
16 describe such documents with sufficient
17 particularity that they may be -- they
18 may be made the subject of a request for
19 production of documents.

20 J, the answer is unknown."

21 Your Honor, I will now read Interrogatory
22 Number 38.

23 MS. GAMBINO: Excuse me. Your Honor, we'd
24 would request that the entire response be read.

25 THE COURT: Yes, please do that. I think that
26 request can be accommodated on the rule of completeness.

27 MS. GAMBINO: Thank you.

28 THE COURT: Is that on the previous

1 interrogatory?

2 MS. GAMBINO: Yes, the section A.

3 THE COURT: Yes, if you would just read the
4 full response.

5 MR. BRATT: There's another paragraph here.
6 One second.

7 THE COURT: While you're looking at that. This
8 is a common sense rule in the Evidence Code called the
9 rule of completeness, that if some part of it is read,
10 then the whole can be read. And rather than having it
11 read later, I'm just asking counsel to read the whole
12 response now.

13 MR. BRATT: Okay. There's another paragraph
14 under J, your Honor -- or after J, I should say. So the
15 answer to J, which I'll re-read J. It's attaching the
16 documents.

17 THE COURT: Thank you.

18 MR. BRATT: J was unknown.

19 The next paragraph reads: "In preparing
20 the response to this interrogatory,
21 Kubota searched for the information in its
22 document warehouse. Additionally, Kubota
23 contacted employees who have retired from
24 employment with Kubota and gathered
25 information from these individuals. The
26 efforts Kubota made in order to obtain the
27 requested information was testified to in a
28 deposition of Mr. Takashi Aramori, person

1 most knowledgeable and custodian of records
2 for Kubota on September 30th, 1996, under
3 the multi-captioned Willy F. Bacon v. Apex
4 Corporation, et al., matter, San Francisco
5 Superior Court Case Number 973070."

6 Okay. I'll make sure here. Interrogatory
7 Number 38, your Honor, is the next one.

8 "With respect to each of your
9 asbestos-containing products, state
10 whether this defendant's name,
11 trademark, logos, color coating, or
12 other identifying markings ever
13 appeared on the actual product itself.
14 If so, identify each such product,
15 state when the practice to place such
16 identifying markings upon the product
17 was begun and when it ended, if
18 applicable, and describe in detail the
19 pertinent markings and the purpose, if
20 any, of such markings."

21 Response: "Yes. Product, asbestos cement
22 pressure pipe. Dates of practice, the
23 marking in principle consisted of the
24 following markings on the pipe subject to
25 the business practice. The first: Size.
26 Size, 4 inch, 6 inch, 8 inch, 10 inch, 12
27 inch in diameter. Class, pressure. Brand,
28 Voss superimposed on a triangle with rounded

1 corners and underlined with Kubota written
2 beneath the triangle. Country of origin,
3 made in Japan. Manufacturing date, 1960 to
4 1975. And specification, for example,
5 AWWA-C400-64T. Purpose of marking,
6 identification of product."

7 And, lastly, your Honor, Interrogatory Number

8 53.

9 "At any time between 1930 and 1985
10 did you import, export, ship, tranship
11 or otherwise transport raw asbestos or
12 asbestos-containing products into, out
13 of, or through any port in the
14 geographic area? If so, for each
15 occasion: A, identify and describe the
16 nature and amount of raw asbestos
17 and/or asbestos-containing products; B,
18 identify the ship or ships, including
19 the owners and operators thereof onto
20 or from which the raw asbestos and/or
21 asbestos-containing products were
22 loaded, unloaded or transshipped; C,
23 state the dates, port and pier involved
24 for each occasion; D, either: 1,
25 attach all documents evidencing the
26 information sought in this
27 interrogatory and its subparts to your
28 answer to these interrogatories; or, 2,

1 attach discs containing such data; or,
2 3, describe such documents with a
3 sufficient particularity that they may
4 be made the subject of a request for
5 production of documents."

6 Response to Interrogatory Number 53: "When
7 export of Kubota asbestos cement pipes to
8 the United States began in 1960, Kubota
9 sold the pipe to Asahi Bussan, that's
10 A-s-a-h-i B-u-s-s-a-n, in parentheses, a
11 trading firm, who then sold it to Voss
12 International Corporation, 2302 East Carson
13 Street, Long Beach, California, 90801.

14 In 1967, a different trading firm was
15 appointed and Kubota began selling it's pipe
16 to Marubeni," spelled M-a-r-u-b-e-n-i,
17 Tokyo, who sold to it Marubeni USA, who sold
18 it to Voss.

19 Furthermore, the first shipment of
20 Kubota pipe to the United States was in
21 July 1960, and 80 tons of 4-millimeter
22 length pipe were exported. The total volume
23 of pipe was, however, apparently shipped
24 back, and Kubota did not begin exporting
25 pipe to the United States again until 1962.

26 With respect to Interrogatory 53
27 subparts B, C and D, Kubota has made a
28 reasonable and good faith search for all

1 records and by inquiry to other natural
2 persons for all responsive information."

3 And that concludes the reading of the Kubota
4 interrogatories.

5 THE COURT: Okay.

6 MR. BRATT: Next, your Honor, we would present
7 our first deposition. And, unfortunately, we do not have
8 a video of this, so we'll have to do a read of it.

9 THE COURT: That's fine. Will we have -- if we
10 have a reader, will the reader be seated and you'll
11 address the question and answer?

12 MR. BRATT: Yes, your Honor. I have a copy for
13 the Court.

14 THE COURT: Will that be Mr. Jones?

15 MR. BRATT: I will answer the questions and
16 Mr. Jones will ask them.

17 THE COURT: Mr. Jones will propound. Fine.
18 Any time you're ready. That's fine.

19 Let me just explain this process. There are
20 procedures in the law. Those requirements -- hold on.

21 A JUROR: Sir, I just need to grab my glasses.

22 THE COURT: I just didn't hear you.

23 A JUROR: Glasses. I need to step out of the
24 chair to grab my glasses.

25 THE COURT: Oh, sure. Please. Please go
26 ahead.

27 Are you displaying something on the screen?

28 MR. BRATT: No. No, your Honor.

1 THE COURT: Okay. There are procedures in the
2 law. It's all set forth in statute. And then, of course,
3 if there are disputes, people like me decide them and
4 higher courts decide them and we try to keep up, about
5 ways in which and whether former testimony in judicial
6 proceedings can be read or referred to in a lawsuit like
7 this. And as you can imagine, there are procedures to do
8 that, and this is one of them.

9 In this case, the -- at another place in time,
10 the deposition of Leon David Horowitz was taken, and it
11 what taken in Pennsylvania in 19 -- we refer to it as the
12 1980 deposition?

13 MR. BRATT: Yes, your Honor.

14 THE COURT: In 1980. And in order to record
15 this, we're going to have Mr. Jones ask the questions
16 right off the printed page that have been agreed to, and
17 then Mr. Bratt will answer.

18 Now, the only difference that you'll treat this
19 as if it were testimony given right here. The main
20 difference that you can think about, of course, is that
21 Mr. Bratt is not a witness, and so you won't be evaluating
22 his demeanor or credibility. He'll just be reading off
23 the page.

24 And so you'll evaluate all of this testimony,
25 counsel will be able to argue its effect of this and other
26 depositions later. But one of the things you won't
27 consider is the demeanor of the witness. He's just going
28 to try to do a straight reading from it. And each side

1 has had a chance to designate portions. And it doesn't
2 matter who offers it, because all the evidence will be
3 considered by you regardless of who designated it.

4 So with that background, you may go forward.
5 This is the deposition of Leon David Horowitz, taken back
6 in 1980 in the Eastern District of Pennsylvania.

7 MR. BRATT: And for the record, June 30th,
8 1980, your Honor.

9 THE COURT: Very good. Yes. Thank you. Thank
10 you very much.

11 Counsel has the full title of the case, we
12 don't have that.

13 MR. JONES: Thank you, your Honor.

14 (Deposition of Leon Horowitz as read by Trey
15 Jones, Esq. and Matt Bratt, Esq.)

16 "Q. What is your full name, Mr. Horowitz?

17 A. Leon David Horowitz.

18 Q. Where do you work?

19 A. I work with American Mutual Liability Insurance
20 Company in Wakefield, Massachusetts.

21 Q. How old are you?

22 A. I'm 62 years old.

23 Q. What is your position at the insurance company?

24 A. I'm chief of the industrial hygiene section of
25 the company.

26 Q. Did you go to college?

27 A. Yes, I went to City College of New York.

28 Q. When did you graduate?

1 A. I graduated as a bachelor of chemical
2 engineering.

3 Q. When?

4 A. 1942.

5 Q. What did you do after getting out of college?

6 A. I went to war, World War II, and then after
7 World War II I got a job in the Division of Industrial
8 Hygiene for the New York State Department of Labor.

9 Q. What year was that?

10 A. That was 1947.

11 Q. What was your title at the time?

12 A. I started as an industrial hygienist and ended
13 as a senior industrial hygienist.

14 Q. When did you end?

15 A. In 1956.

16 Q. What were your duties there in the state of New
17 York?

18 A. My duties were examining industrial exhaust
19 systems for the control of toxic gases and fumes for all
20 of industry in New York state as well as surveying
21 industry in New York state for exposure to industrial
22 toxic dust, gases, and fumes.

23 Q. What kinds of toxic dust, gases and fumes did
24 your job deal with?

25 A. All dusts, gases and fumes that were considered
26 toxic at the time.

27 Q. Did your work embrace asbestos?

28 A. Yes, it did.

1 Q. Was there a prescribed level of asbestos in the
2 ambient air that was prescribed for that plant?

3 A. Yes, there was for that --

4 Q. Type of plant?

5 A. For that type of the exposure, not for the
6 plant.

7 Q. And what was that prescribed level?

8 A. Five million particles per cubic foot of air.

9 Q. I called it a prescribed level. Was it a
10 standard that the plant had to meet?

11 A. It was a level considered or advised by the
12 American Conference of Governmental and Industrial
13 Hygienists to be an exposure below which it was considered
14 safe for at least 80 percent of people exposed to that
15 level.

16 Q. Have you been led to believe that exposures to
17 asbestos dust above that standard might be harmful to
18 health?

19 A. Would you ask the question again?

20 Q. Yes. Prior to the time that you visited that
21 asbestos glove plant, had you been led to believe that
22 exposures to asbestos above the standard that you just
23 described and might be harmful to human health?

24 A. We were taught, and our understanding was, to
25 interpret the list of threshold limit values in general,
26 not asbestos specifically, or any specifically. In
27 general, those values were guidelines to those of us in
28 the industry to aim for that level for a safe value. In

1 other words, when you designed an exhaust system, you
2 would try to get it below that level, in general. So it
3 was a guide, it was not an absolute figure.

4 Q. When you were with the state of New York, did
5 anyone tell you that exposures to asbestos at any
6 particular levels might be harmful to human health?

7 A. Asbestos was considered one of the toxic
8 materials by the fact of its threshold limit value. No
9 specific discussion was made about asbestos more than any
10 other material. The discussions would generally go to
11 where we had more work. Silicosis was definitely a
12 greater amount of discussion than asbestos at that time.

13 Q. Now, when did you leave the state of New York?

14 A. I left in 1956.

15 Q. What did you do after that?

16 A. I became a consultant in industrial hygiene in
17 New York City.

18 Q. How long did you remain in that?

19 A. For four years, until 1960.

20 Q. What did you do after you left that consulting
21 position?

22 A. I was hired by Keasbey & Mattison of Ambler,
23 Pennsylvania, as a dust control engineer.

24 Q. How did you first make contact with Keasbey &
25 Mattison?

26 A. They had an advertisement for a dust control
27 engineer in the New York Times and I responded to that.

28 Q. Did he describe the position to you?

1 A. He told me they were looking for a specialist
2 in dust control engineer.

3 Q. Do you remember anything else he told you about
4 the background of the problem or the purpose of the job?

5 A. I don't remember anything else, no. I did not
6 meet Mr. Schneider at the time, but that is all I really
7 remember.

8 Q. Did Mr. Spedding explain to you why they were
9 looking for someone with your capabilities?

10 A. No. I just assumed they needed somebody who
11 knew a little more about dust control than they had at the
12 time.

13 Q. Did you accept their offer?

14 A. Yes, I did.

15 Q. When did you go to work?

16 A. I believe it was May of that year, 1960.

17 Q. What was your title?

18 A. I believe my first title was dust control
19 engineer.

20 Q. How long did you remain dust control engineer?

21 A. I was dust control engineer until a few years
22 later after CertainTeed took over, and when I took over
23 duties as corporate safety director. I don't know the
24 exact year, but it may have been '65.

25 Q. How long did you remain corporate safety
26 director?

27 A. From '65 to '68 when I left the company.

28 Q. When you first started with Keasbey & Mattison,

1 were your duties company wide or did they relate to a
2 particular plant?

3 A. They were company wide with respect to dust
4 control engineering, and I added, with their agreement, to
5 do industrial hygiene work.

6 Q. Did the industrial hygiene work pertain to all
7 plants or just to a particular plant?

8 A. All the plants they had at that time.

9 Q. Was there anyone who worked with you on the
10 same level that you were on?

11 A. John McGinley -- M-c-G-i-n-l-e-y, for the
12 record -- was a young graduate of Drexel, I believe, and
13 Al Spedding asked me to train him in dust control
14 engineering as well as in industrial hygiene to sort of
15 work with me.

16 Q. How long did Mr. McGinley work with you?

17 A. I don't know the length of time, but he left to
18 go to another job and then came back after some space of
19 time and was hired as a regular engineer, not to work with
20 me.

21 Q. Did someone replace him in working with you?

22 A. No.

23 Q. Was there anyone else who had as his primary
24 role either dust control engineering or industrial
25 hygiene?

26 A. Nobody had industrial hygiene. But when I took
27 over the safety work, I dropped the dust control, except
28 in an advisory capacity to a draftsman that they had

1 assigned that role to.

2 Q. Who was that?

3 A. I'm afraid I don't remember his name. His
4 first name was George.

5 Q. Let's go back to 1960 when you first went to
6 Keasbey & Mattison. Tell us what your duties were with
7 regard to dust control engineering.

8 A. It is hard to remember. My duties, in general,
9 were to improve old areas that may need improvement, as
10 well as design new areas that needed dust control exhaust
11 systems, in general.

12 Q. I guess maybe I didn't ask you this. When did
13 you stop doing dust control engineering work?

14 A. When I was given the function as safety
15 supervisor of the company.

16 Q. And when was that?

17 A. I just don't remember the year, but I think it
18 was about '65.

19 Q. It was after CertainTeed took over?

20 A. Oh, yes, definitely.

21 Q. Exhibit Number 1, do you have that in front of
22 you, Mr. Horowitz?

23 A. Yes, I do.

24 Q. Just to make sure we're all working with the
25 same paper, would you just read what appears to be the
26 title of that document?

27 A. Memorandum on Proposed Epidemiological Study of
28 Lung Cancer in Asbestos Workers for the Asbestos Textile

1 Institute.

2 Q. Have you ever seen this document before?

3 A. Yes.

4 Q. When did you first see it?

5 A. I can only guess that I picked it up during my
6 meetings between 1960 and '62 at the Asbestos Textile
7 Institute.

8 Q. What personal file was that that you placed
9 this document in, Mr. Horowitz?

10 A. I kept files of everything relating to the
11 hazards relating to the job, having to do with the job.
12 And I would have it in my desk or a file near my desk.

13 Q. Could you be a little bit more specific about
14 what you mean by "hazards relating to the job"?

15 A. Well, any papers or any documents relating to
16 silica, how to sample any new concepts relating to silica,
17 diatomaceous earth, asbestos, or any materials that I
18 would be responsible for for the company I worked, I kept
19 files on. I always have done that.

20 Q. Did you take those files with you when you left
21 CertainTeed?

22 A. Yes, I did.

23 Q. Did you leave any documents that had been
24 contained in your personal file that you just described at
25 CertainTeed?

26 A. I took my personal files with me.

27 Q. To whom did you normally pass on such
28 information?

1 A. To the one I was directly responsible to, and
2 that would be Al Spedding.

3 Q. Did you ever pass on such information to
4 Mr. Schneider?

5 A. In general discussion, yes. Specifically, I
6 can't recall.

7 Q. Do you remember whether or not you ever
8 discussed this document or its contents with any plant
9 managers or other employees at a particular plant?

10 A. Not the documents in particular, no.

11 Q. How about the contents of the documents?

12 A. The whole concept was in general discussion at
13 various times.

14 Q. While you were at Keasbey & Mattison?

15 A. Again, I don't have total recall. By "whole
16 concept," I mean all hazards.

17 Q. Did you ever discuss the subject of the risk of
18 cancer from asbestos exposure with anyone at Turner &
19 Newell?

20 A. Yes.

21 Q. Do you remember when you first had such a
22 discussion?

23 A. A visit was made by a Dr. Knox from Turner &
24 Newell, and he brought the subject up.

25 Q. A visit to where?

26 A. To Keasbey & Mattison.

27 Q. Do you remember when that was?

28 A. I believe it was 1960.

1 Q. What did Dr. Knox tell you at that meeting?

2 A. His concern, as well as the general knowledge
3 that seemed to prevail in the British Empire, that cancer
4 was associated with asbestos.

5 Q. Did he discuss any particular form of cancer?

6 A. Yes. He mentioned mesothelioma.

7 Q. What did he say about mesothelioma?

8 A. That it was a unique cancer. That a person
9 could get it with even low exposure, and they were not
10 sure about whether it was due to ingestion or -- well, I
11 shouldn't say they were not sure. They think it might
12 have been caused by both ingestion as well as inhalation.

13 Q. Let's turn to the document that has been marked
14 Horowitz Number 2. Would you read the heading on that
15 document?

16 A. Proposed Industrial Hygiene Program for all
17 Keasbey & Mattison Plants.

18 Q. Have you ever seen that document before?

19 A. I wrote it.

20 Q. Is this a copy of a document that you wrote?

21 A. Yes.

22 Q. Can you tell us the circumstances under which
23 you wrote this document?

24 A. I believe it was --

25 Q. Can you tell us the circumstances under which
26 you wrote this document?

27 A. I believe it was a result of Dr. Knox's
28 meeting. I was asked to work up a program for all the

1 Keasbey & Mattison plants.

2 Q. Do you remember who asked you to do that?

3 A. I think it was a consensus of Mr. Childs,
4 Mr. Schneider, and Mr. Spedding.

5 Q. I'd like you to turn to the document that has
6 been marked Horowitz Exhibit 6. Would you please read the
7 heading on the document?

8 A. The original document was made by myself on
9 October 13th, 1960, in Ambler. It was a memo to all plant
10 managers and the subject was Respirator Program For All,
11 first it was K and M plants, and then when we switched
12 over to CertainTeed, I kept the same memo and just crossed
13 out K and M and used CPC to mean CertainTeed Products.

14 Q. Would you look at the document that has been
15 marked as Horowitz Exhibit 20.

16 A. Yes.

17 Q. Would you look at the last page of that
18 document.

19 A. Yes.

20 Q. Could you identify that for us.

21 A. It's the same as the one I just mentioned,
22 Respirator Program For All K and M Plants.

23 Q. Did you write that document?

24 A. Yes.

25 Q. And this is a copy of it?

26 A. Yes.

27 Q. That is your signature down at the bottom?

28 A. Yes.

1 Q. Now, let's jump back to Number 6 and see if I
2 understand correctly. The document attached to Exhibit
3 Number 20 is the original form, and the document that is
4 marked as 6 is a revised form?

5 A. I don't even know if I made a revision on it.
6 I may have made -- may I look at 20 again?

7 Q. Yes.

8 A. Apparently I made some additions when I changed
9 it to the CertainTeed Products Corporation.

10 Q. Is that what CPC stands for?

11 A. CertainTeed Products Corporation, right. I
12 added one statement there. Do you see that? Quote,
13 individual clean containers must be provided to each
14 employee for storage of his personal respirator if a
15 central storage cabinet is not available, end quote. That
16 was added to the CPC. That wasn't on the original.

17 Q. Did you also add the note at the very bottom?

18 A. Yes, I did.

19 Q. Do you see the handwriting next to the note in
20 which there appeared to be dates?

21 A. Yes.

22 Q. Can you explain those notations?

23 A. It indicates the fact that the addition and the
24 added statement on the bottom was put in on that date.

25 Q. Which date was that?

26 A. It was 1967, 8/9/67.

27 Q. How about the date below that?

28 A. About -- excuse me.

1 There is a little delta reference to it on
2 December 6th, 1967, and I don't have any recall why that
3 was put in.

4 Q. Look at paragraph 1, if you will. Dust
5 respirators must be used by K and M or CPC personnel at
6 all operations.

7 Do you know whether or not the plant managers
8 enforced that requirement?

9 A. Not 100 percent, but they tried.

10 Q. The plant managers tried?

11 A. I believe so, yes.

12 Q. Do you know how they communicated this policy
13 to the employees, if they did?

14 A. No total recall. I believe signs. And when I
15 visited, I asked them about it, and they said they
16 provided respirators. Not everybody was willing to use
17 them. That kind of a discussion.

18 Q. Do you remember whether there were areas at
19 Ambler where dust conditions were noticeably bad, in your
20 view, at Keasbey Mattison?

21 A. Perhaps it needs a little explanation. The
22 making of pipe constitutes a cutting away of a certain
23 amount of material. So making dust is part of making
24 pipe.

25 Dust control is needed for two reasons. First,
26 to take the dust away so that you can make the pipe,
27 otherwise it would pile up, and also for the reason of
28 taking away the very fine particles that go into the air

1 and could create a hazard. So to answer your question,
2 the whole operation consisted of making dust.

3 Q. Did Keasbey & Mattison maintain any kind of
4 file or collection of books or articles on industrial
5 hygiene or occupational disease?

6 A. None other than what I collected.

7 Q. Did you collect books and articles from time to
8 time on these subjects?

9 A. Mostly abstracts.

10 Q. Where did you get your abstracts?

11 A. The Industrial Health Foundation in Pittsburgh
12 would provide abstracts, in general.

13 Q. Abstracts of what?

14 A. Of all subjects relating to industrial hygiene
15 and toxicology.

16 Q. Did that include --

17 A. Worldwide publications.

18 Q. How often did those abstracts arrive on your
19 desk?

20 A. Well, I -- well, presently I get it once a
21 month. I don't recall how often it was then.

22 Q. Do you have any reason to believe that it was
23 less frequently than once a month when you were at Keasbey
24 & Mattison?

25 A. It might have been quarterly. I don't recall.
26 Keasbey & Mattison and CertainTeed were a member of the
27 Pittsburg --

28 Q. The Industrial Health Foundation?

1 A. The Industrial Health Foundation.

2 Q. Did you regularly get articles that dealt with
3 asbestos?

4 A. I would cull it from the literature wherever I
5 got it.

6 Q. Did you get some articles dealing with asbestos
7 from the Industrial Health Foundation or abstracts of
8 articles?

9 A. Probably, yes.

10 Q. Did you get abstracts from any other source?

11 A. I asked an insurance company what knowledge
12 they had when the problem of cancer came up. I tried to
13 get more information, and I got a few abstracts from them.

14 Q. Do you remember who the insurance company was
15 at that time?

16 A. American Mutual, the one I work for now.

17 Q. Did they give you additional information on --

18 A. A few abstracts. They gave me photocopies of
19 published references on the subject, articles or papers
20 that had been written in England and South Africa.

21 Q. That dealt with asbestos?

22 A. That dealt with asbestos. Well, lung cancer
23 was a question at the time.

24 Q. So the abstracts dealt with the potential
25 relationship between asbestos and lung cancer?

26 A. Right.

27 Q. Would you now turn to Horowitz Exhibit 21 and
28 read the heading of that.

1 A. To Mr. H. C. Johnson, September 25th, 1962.
2 Subject: Asbestos Textile Institute meeting, in
3 parentheses, ATI, Air, Hygiene and Manufacturing
4 Committee, September 13 and 14, 1962.

5 Q. Is this a copy of a document you prepared?

6 A. Yes, it is.

7 Q. Do you recall whether you were working for
8 CertainTeed or Keasbey & Mattison at the time this
9 document was prepared?

10 A. The fact that it's written to H. C. Johnson
11 indicates it is CertainTeed.

12 Q. Who is Mr. H. C. Johnson?

13 A. Mr. H. C. Johnson was chief of the engineering
14 group of CertainTeed when CertainTeed took over.

15 Q. Do you know who Mr. M. S. Davis, Jr., is?

16 A. He was vice president of CertainTeed. I don't
17 recall which division. I think eventually he was vice
18 president of the pipe division, but I cannot be sure.

19 Q. How about Mr. M. Fink, who was he?

20 A. Mr. Matt Fink was the safety director for
21 CertainTeed.

22 Q. Would you now turn to Exhibit 23. Would you
23 read the heading of that.

24 A. Asbestos Exposure in Neoplasia, June 1st, 1964,
25 to Mr. R. L. Lanz.

26 Q. Have you ever seen this document before?

27 A. Yes, I have.

28 Q. Is this a copy of a document you prepared for

1 Mr. Lanz at CertainTeed?

2 A. Yes.

3 Q. Do you remember the circumstances that led you
4 to prepare this document for Mr. Lanz?

5 A. I believe from my notes that I was trying to
6 indicate to management that we should cooperate with the
7 U.S. Public Health Service visit.

8 Q. Can you read the handwriting at the bottom of
9 the page for us?

10 A. I made a note of the last paragraph saying
11 R. L. Lanz phoned June 2nd, 1964. Okay for U.S. Public
12 Health Service visit.

13 Q. Would you look at the first paragraph?

14 A. Yes.

15 Q. I take it you did attend the meeting referred
16 to in Philadelphia on April 29, 1964?

17 A. Yes.

18 Q. Are you aware that Dr. Selikoff read a paper at
19 a meeting of the New York Academy of Medicine in New York
20 City in the fall of 1964?

21 A. In the Waldorf Astoria, is that the one you are
22 referring to?

23 Q. Well, I think so, yes..

24 A. He read many papers there.

25 Q. And --

26 A. He and his team gave many papers there.

27 Q. And did some of those papers deal with the
28 subject of the risk of cancer from exposure to asbestos?

1 A. Yes.

2 Q. Did you attend that New York Academy session?

3 A. Yes, I did.

4 Q. Who went with you, Mr. Horowitz?

5 A. A Dr. Shaw of the ATI went with me.

6 Q. Dr. Shaw?

7 A. That is right.

8 Q. Who arranged for the two of you to be together?

9 A. I believe Mr. Hutchcroft, but I'm not sure.

10 Q. And who, again, is Mr. Hutchcroft?

11 A. He was in the R & D section of both Keasbey &
12 Mattison and CertainTeed, research and development.

13 Q. Did you write a report to your employer on the
14 New York Academy meeting?

15 A. Yes, I did.

16 Q. Did you place that report in your personal
17 file?

18 A. Yes.

19 Q. Mr. Horowitz, would you please turn to Exhibit
20 24. Would you read the heading of Exhibit 24, please.

21 A. To Mr. H. J. Angstadt. Spelled
22 A-n-g-s-t-a-d-t. October 16th, 1964, X-ray Program.

23 Q. Do you know who prepared this document?

24 A. I believe I did. Yes, I did.

25 Q. Would you look at Exhibit 25, please. Would
26 you read the heading of that.

27 A. To all pipe managers, August 11th, 1965, Chest
28 X-ray Program.

1 Q. Do you recognize this document?

2 A. Yes. It is my document.

3 Q. You prepared this document?

4 A. Yes, I did.

5 Q. Are those your initials up in the right-hand
6 corner?

7 A. Those are my initials up in the right-hand
8 corner.

9 Q. Would you look over at the names that are shown
10 to have received a carbon copy. Would you identify Dr.
11 D. J. Donald for me?

12 A. I believe he was an outside medical consultant
13 to the company.

14 Q. Well, in response to one of my earlier
15 questions you said, including your answer, as far as the
16 ATI is concerned -- now, were you referring to some other
17 organization of which you also attended meetings?

18 A. Well, I would attend annual meetings of the
19 American Industrial Hygiene Association. I would attend
20 either annual or semiannual meetings of the Industrial
21 Health Foundation in Pittsburgh at the Melon Institute.
22 And that is all I recall for the time.

23 Oh, I attended local industrial hygiene
24 meetings, American Industrial Hygiene Association
25 meetings, and then I would attend any specific meetings
26 that I thought related to the subject of my area of
27 responsibility.

28 Q. Did you have any contact during your years both

1 at Keasbey & Mattison or CertainTeed with the National
2 Safety Council?

3 A. I represented our company at a National Safety
4 Council annual meeting after I became safety supervisor of
5 the company, yes.

6 Q. Just refresh my recollection, sir. When was
7 that?

8 A. Somewhere around '65 or '4. '65, I think it
9 was.

10 Q. That was just one meeting?

11 A. No, annually after that.

12 Q. As part of your contact with the National
13 Safety Council, was asbestos and health ever discussed or
14 did you ever receive any information from the council on
15 that subject?

16 A. It wasn't a dominant problem with them.
17 Industrial hygiene is of greater interest to them now.
18 Industrial hygiene was just one section of a whole week
19 program, and the subject varied, but I don't recall any
20 asbestos discussion at the time between '65 and '68.

21 Q. Did Keasbey & Mattison receive anything from
22 the National Safety Council in the nature of posters or
23 leaflets for distribution to employees?

24 A. I would order them as the safety director, and
25 so did Matt Fink before that, I am pretty sure.

26 Q. When did you first order them? In 1965?

27 A. Whenever I saw a subject that I thought would
28 be helpful for a particular subject that I had in mind,

1 which would publicize or help tell the employees keep your
2 fingers out of the machine and stuff like that. Movies I
3 would rent and stuff like that. I would pay for
4 subscriptions to their magazine for each of the plants,
5 things like that.

6 Q. What was the name of the magazine?

7 A. National Safety Council News, I think.

8 Q. For how many years was Keasbey & Mattison or
9 CertainTeed receiving copies of that magazine?

10 A. I don't remember Keasbey & Mattison, but
11 CertainTeed received it every year, as far as I know.

12 Q. Beginning in '62?

13 A. Maybe prior to that. I don't know.

14 Q. You started attending ATI Air Hygiene Committee
15 meetings for your employer in what year?

16 A. 1960, about September, I think.

17 Q. From what year to what year?

18 A. When CertainTeed took over. I don't know
19 exactly when I started going to meetings, but it was
20 probably within a year or so after CertainTeed took over.

21 Q. Would that have been up until the time you left
22 the company?

23 A. Up until the time I left the company.

24 Q. On the day before CertainTeed took over this
25 plant in '62, you had certain files, did you not?

26 A. Yes.

27 Q. When the transfer was made from Keasbey &
28 Mattison to CertainTeed, did you throw away all those old

1 files?

2 A. No I did not.

3 Q. Did you keep them all?

4 A. I kept what I had or what I thought I needed,
5 yes.

6 Q. Would it be fair to say that the information in
7 terms of documents that your department had relating to
8 industrial hygiene and asbestos and health prior to the
9 take over by CertainTeed, was kept after the take over by
10 CertainTeed?

11 A. Yes, it was.

12 Q. Likewise, of course, you had certain knowledge
13 yourself, personally, that you had acquired both from
14 training, background, experience, and on the job, right?

15 A. Yes, definitely.

16 Q. Naturally, you retained that as well with the
17 new employer?

18 A. Yes. I retained what I thought was necessary,
19 and I weeded out what wasn't necessary. And I didn't
20 specify asbestos as being anything different than any
21 other hazard. All hazards had my attention, and its
22 proportionate weight.

23 Q. Mr. Horowitz, I want to ask you one catchall
24 question about the documents that we have seen today that
25 you have produced for us, Exhibits 1 through 26.

26 To the best of your recollection, are they true
27 and accurate copies of documents that you kept in your
28 personal file in the ordinary course of your work for

1 **Keasbey & Mattison or CertainTeed?**

2 A. They are true copies of records of my function
3 describing some of my work there, yes.

4 **Q. At Keasbey & Mattison and CertainTeed?**

5 A. Right.

6 **Q. Do you agree with the statement made by Hugh**
7 **Jackson of Johns Manville, that respirators are our last**
8 **line of defense?**

9 A. It is an opinion question anyway, so I think it
10 is kind of ridiculous. Hugh Jackson comes to mind. I
11 have met the fellow, yes. I will tell you this, I as an
12 industrial hygienist would use it as a last method of
13 defense and only where I can't use something better.

14 **Q. Did you ever at any time while you were with**
15 **Keasbey & Mattison or CertainTeed, directly discuss with**
16 **the employees, hourly or pieceworking employees, health**
17 **hazards related to asbestos exposure?**

18 A. It was not my responsibility."

19 (Interruption.)

20 **"Q. Did you ever at any time while you were with**
21 **Keasbey & Mattison or CertainTeed directly discuss with**
22 **the employees, hourly or pieceworking employees, health**
23 **hazards related to asbestos exposure?**

24 A. It was not my responsibility to bring that to
25 their attention. But when I was taking air samples, it
26 was natural for them to ask me what I was doing. Some of
27 them -- and I would explain to them what I was doing.

28 **Q. That you were taking air samples?**

1 A. That I was taking air samples to determine the
2 concentration of dust in the air.

3 Q. But did you talk to them at the time about
4 asbestosis or cancer?

5 A. No, I did not.

6 Q. Do you know of anything that any of the
7 companies that supplied asbestos to Ambler did by way of
8 warning the workers of health hazards of working with
9 asbestos?

10 A. I'm not aware of anything.

11 Q. Did you ever discuss with any of the suppliers
12 of asbestos and to Ambler anything dealing with putting
13 warnings on the bags of asbestos?

14 A. I did not.

15 Q. Did you ever see any warnings on the bags of
16 asbestos while you were employed by Keasbey & Mattison or
17 CertainTeed?

18 A. I don't recall seeing it."

19 THE COURT: Does that complete the reading?

20 MR. BRATT: It does.

21 THE COURT: Okay. We'll take just a moment and
22 recess. I'll just say that without emphasizing anything
23 here, June 2nd or 3rd, 1964, I saw reference there, that
24 was getting close to my last day of my first-year law
25 exams. A few days later on June 7th, 50 years ago, I was
26 married.

27 So we'll take our recess now, and we'll -- for
28 15 minutes. 15 minutes after the hour.

1. (Whereupon, the jury enters the courtroom.)

2 THE COURT: All right. We're all together.
3 We'll come to order. The --

4 Our bailiff presented a request from a juror,
5 perfectly reasonable request, which was when I declare a
6 recess if I could give you 30 seconds or so to complete
7 any note you were taking, that kind of thing. Glad to
8 accommodate that. I'm always just very mindful that it's
9 your time that's involved, and we're trying to move the
10 case efficiently, not have you a day longer than
11 necessary without in any way appearing to rush it. So
12 sometimes I move it along, maybe not at everyone's
13 comfort level.

14 So we're going to continue next with the reading
15 of a deposition. If you'd like to come up, I'll set it
16 up here.

17 MR. BRATT: Yes, your Honor. Sure. Thank you.

18 THE COURT: This is going to be another reading.
19 It's a different deposition, a couple years -- taken a
20 couple years later of Mr. Leon Horowitz, and it was taken
21 in a judicial proceeding in Pennsylvania, and the date of
22 the deposition was February 1, 1982. And the questions
23 were put to Mr. Horowitz and answers were given. Is that
24 right?

25 MR. BRATT: And there's a second, towards the
26 end. We'll finish the February first, and then we'll go
27 to a February second, which is the second volume.

28 THE COURT: Very good. So that just continues

1 on a second day apparently.

2 I -- of course, the oath was administered back
3 then to the witness and it was an authorized deposition.

4 Mr. Jones, you can go forward.

5 MR. JONES: Thank you, your Honor.

6 ---oOo---

7 DEPOSITION OF LEON HOROWITZ

8 AS READ BY TREY JONES AND MARK BRATT

9
10 Q. Would you state your full name for the record
11 please?

12 A. Leon David Horowitz.

13 Q. At the time you went with Keasbey and Mattison
14 in 1960, what was your understanding of the nature of
15 asbestos-related disease?

16 A. My understanding as to the nature of this
17 disease at the time was that it was one of what we call
18 pneumoconiosis disease.

19 Q. What disease entity are you talking about?

20 A. That has to do with a lung disease due to
21 exposure of dust.

22 Q. What is the name of the disease you're talking
23 about?

24 A. Asbestosis.

25 Q. And how did you understand that that disease was
26 contracted?

27 A. By breathing.

28 Q. At some time after joining Keasbey and Mattison,

1 did you learn of a suspected link between asbestos
2 exposure and cancer?

3 A. Yes, I did.

4 Q. How did that occur?

5 A. I read it in the literature somewhere.

6 Q. What did you read? Do you recall?

7 A. Reference to the fact that in other countries,
8 like England and South Africa, some investigation
9 concluded or did not conclude but did say there may be an
10 association to between the cancer, the lung cancer and
11 asbestos.

12 Q. Approximately what time did you come across
13 these articles that you just described?

14 A. Early in my career with Keasbey and Mattison,
15 between May of 1960 and September of 1960.

16 Q. At some point still in 1960 did you have
17 personal discussions or did you participate in any
18 conferences where the subject was discussed?

19 A. Well, prior to that I contacted my insurance
20 company to find out what they knew about it. They sent
21 me a few abstracts relating to the news that I had read
22 or the items that I had read.

23 Q. Did you subsequently or did you at some point in
24 1960 participate in a discussion with Dr. Knox?

25 A. Yes, I did.

26 Q. Could you tell us who he is please?

27 A. Dr. Knox represented Turner-Newall in a visit to
28 the United States at that time.

1 Q. Would you tell us what was discussed at that
2 meeting, and, first of all, tell us when it was?

3 A. Again, I don't know the exact date, but it was
4 in 1960, somewhere around September.

5 Q. What was discussed?

6 A. The discussion -- it appeared the purpose of his
7 visit was to inform the management of Keasbey and
8 Mattison that there was an association between cancer and
9 asbestos exposure.

10 Q. Did you participate in the meeting?

11 A. I was invited and I sat in the meeting, yes.

12 Q. What was discussed at the meeting?

13 A. I don't recall the whole discussion, but the
14 part that I do recall in the time I sat in was the
15 urgency that Dr. Knox informed the management or was
16 trying to inform the management that the awareness of the
17 association between cancer and asbestos in England was
18 much greater than it was in the United States. He did
19 show us a picture which described a mesothelioma which I
20 had never heard of before, and it was the first time I
21 heard of it at that time.

22 Q. As a result of your participation in that
23 meeting, did you initiate certain procedures and
24 guidelines for the Keasbey and Mattison company?

25 A. We organized under Mr. Childs' direction, a Loss
26 Control Committee, and I was asked to propose an
27 industrial hygiene program.

28 Q. Did you, in fact, make such proposal?

1 A. I did so.

2 Q. During the course of your work with Keasbey and
3 Mattison and CertainTeed, did you attend various meetings
4 dealing with industrial hygiene?

5 A. Yes, I did.

6 Q. Meetings by various organizations?

7 A. Yes, I did.

8 Q. And was it your usual practice to report to your
9 superior the transactions of these meetings?

10 A. Only those that were pertinent to our problems.

11 Q. And those problems being what, sir?

12 A. Anything having to do with exposure to asbestos,
13 dust, silica dust, talc and mica, et cetera.

14 Q. Were these all substances that were used in the
15 Keasbey and Mattison and CertainTeed processes?

16 A. Yes, they were.

17 Q. In reporting to the people you reported to in
18 writing this memorandum, were you following the usual
19 procedure that you have in your years with Keasbey and
20 Mattison of preparing memoranda for meetings you
21 attended?

22 A. Yes.

23 Q. Did that practice continue after you went to
24 CertainTeed?

25 A. Yes.

26 Q. After CertainTeed took over?

27 A. Yes.

28 Q. Would you please turn to -- please turn to

1 Horowitz 21. Would you read us the title and date of it?

2 A. I'm just comparing. You prefer that I read from
3 this right, from my own copy.

4 Q. From your actual copy. Right?

5 A. Right. The subject was Asbestos Textile
6 Institute meeting, air hygiene and manufacturing
7 committee, September 13 and 14, 1962, and the date it was
8 written was September 25, 1962.

9 Q. Would you tell us what your involvement was with
10 the meeting?

11 A. I was a member of the air hygiene -- air hygiene
12 and manufacturing committee, and this was my -- one of
13 the meetings that I usually attended.

14 Q. When did you become a member of the air hygiene
15 and manufacturing committee?

16 A. Within two or three months of my being hired by
17 Keasbey and Mattison.

18 Q. And that was a committee of the ATI, the
19 Asbestos Textile Institute. Is that right?

20 A. Yes, it was.

21 Q. And when you attended this meeting on
22 September 25, 1962, were you attending for Keasbey and
23 Mattison or for CertainTeed?

24 A. I was attending for CertainTeed.

25 Q. And why is it that you continued to attend the
26 ATI meetings after CertainTeed took over?

27 A. Yes. If you notice the first subject or the
28 main subject was US Public Health Survey.

1 At that time or previous to that while still
2 representing Keasbey and Mattison the US Public Health
3 Survey had presented a program --

4 THE COURT: Service.

5 MR. BRATT: I'm sorry. Thank you, your Honor.

6 A. The US Public Health Service had presented a
7 program, a program to the ATI in which they wanted to
8 evaluate dust exposure as well as make a medical study at
9 the asbestos plants, and they had proposed it to the
10 members of the ATI, and as a representative of Keasbey
11 and Mattison, I was involved with that, and I recommended
12 to CertainTeed management that since the meetings were
13 still continuing and that they would probably -- and that
14 they would visit our plants that CertainTeed now owned
15 that I continued going to these meetings, and that's why
16 I went.

17 Q. And this is a document written by you?

18 A. This is a document written by me.

19 Q. Just so we clarify, Mr. Horowitz, when you
20 summarized these meetings that you attended and
21 specifically meetings of the Asbestos Textile Institutes
22 Air Hygiene Committee, were you basically summarizing the
23 discussions and transactions that took place at the
24 meetings?

25 A. I was reporting on the transactions that took
26 place at the meeting, and naturally, it was in summary
27 form, yes.

28 Q. Turning now to Horowitz 22, can you tell us what

1 **this document is and its date?**

2 A. Again, another meeting with the Asbestos Textile
3 Institute Air Hygiene and Manufacturing Committee, which
4 was on January 24, 1963. And I wrote it on January 29,
5 1963, reporting it to Mr. HC Johnson, vice president of
6 engineering at the time, or chief of engineering, his
7 exact title.

8 **Q. And referring to the first paragraph, would you**
9 **read that please, the first underlined title?**

10 A. Environmental and medical implant occupational
11 health study of the asbestos products industry.

12 **Q. Who was doing this study or planning to do it?**

13 A. The US public health service. This was a
14 continuation of the previous discussions that the US
15 public health service had on their proposal to study the
16 asbestos industry.

17 **Q. Did the study actually take place?**

18 A. What part -- sorry.

19 The study part of the study actually took place.

20 **Q. What part?**

21 A. There were two parts. One was supposed to be
22 environmental, the other medical. The only part that was
23 ever conducted was the environmental.

24 **Q. As part of that study were any CertainTeed**
25 **plants visited by the US public health service?**

26 A. Yes.

27 **Q. Which plants, if you recall?**

28 A. Two plants, one in St. Louis and one in Santa

1 Clara.

2 Q. And --

3 A. Santa Clara. That was the other one.

4 Q. Exactly what procedures were performed or what
5 tests or measurements were performed?

6 A. The -- a team of US public health service
7 workers or people came to the plant. One person was
8 assigned to take work histories of the employees, while a
9 team of four people were using various methods available
10 at the time, as well as new methods of dust counting or
11 dust sampling, and they were counting on the premises.

12 Q. Is this a document actually written by you?

13 A. Yes, it is.

14 Q. Or a copy of a document written by you?

15 A. This is a copy of a document written by me.

16 Q. Would you turn now to Horowitz Exhibit 23,
17 please.

18 Would you tell us what this one-page document
19 is?

20 A. I was reporting on some material I had read
21 about asbestos exposure and neoplasia to Mr. RL Lanz, and
22 the date was June 1, 1964.

23 Q. Who is Mr. Lanz?

24 A. Mr. Lanz was vice president of the pipe division
25 at that time.

26 THE COURT: Just one second. L-a-n-z.

27 THE WITNESS: Lanz, yeah.

28 Q. Of CertainTeed?

1 A. Of CertainTeed.

2 Q. And what was your purpose in writing this to
3 him?

4 A. To keep him updated on the discussions and the
5 press and in the field about asbestos and its
6 relationship to cancer.

7 Q. Just one other thing. There's a reference here
8 to a Dr. Selikoff in the first paragraph in an American
9 Industrial Hygiene meeting in Philadelphia on April 29,
10 1964.

11 A. Right.

12 Q. Is that a meeting that you attended?

13 A. Yes.

14 Q. Did you attend any other conferences where
15 Dr. Selikoff was involved as a speaker?

16 A. Yes.

17 Q. What other conferences did you attend?

18 A. The main one and first one was the large
19 conference in 1964 at the Waldorf-Astoria, which was an
20 international conference.

21 Q. Okay. What was the first conference that you
22 attended where Dr. Selikoff was involved?

23 A. It was the international conference on asbestos
24 at the Waldorf-Astoria.

25 Q. And what was the subject of that conference?

26 A. The subject of the conference was asbestos and
27 its relationship to occupational disease.

28 Q. What occupational diseases was the conference

1 involved with?

2 A. They were involved with asbestosis, lung cancer,
3 and mesothelioma.

4 Q. And were all three of those diseases discussed
5 at the conference at the Waldorf-Astoria in 1964?

6 A. They were.

7 Q. What was the subject matter of Dr. Selikoff's
8 speech to the American Industrial Hygiene Foundation in
9 Philadelphia --

10 The Industrial -- American Industrial Hygiene
11 Meeting in Philadelphia, on April 29, 1964.

12 A. The subject was related to the asbestos exposure
13 and neoplasia, and the article that I attached to this,
14 which we don't have, the newspaper article, describes
15 that event. So that was the subject matter.

16 Q. What was meant by neoplasia?

17 A. I understand it to mean cancer related.

18 Q. Going now to Horowitz 24.

19 A. Yes.

20 Q. Do you have that?

21 A. Yes, I have.

22 Q. Can you give us the title and date of that?

23 A. The title is x-ray program. The date I wrote it
24 was October 16, 1964. And it was written to Mr. Ankstat

25 --

26 For the record, A-n-k-s-t-a-t.

27 -- who was plant manager of Santa Clara plant in
28 California.

1 Q. Would you read the -- that's all right. Would
2 you take a look please at Horowitz 25?

3 A. Yes.

4 Q. What is that and who wrote it?

5 A. I wrote it. The title was chest x-ray program.
6 The date it was written was August 11, 1965. It was an
7 attempt to tell all pipe plant managers and direct them
8 on having a chest x-ray program.

9 Q. Did you conduct any dust counts in plant 8 when
10 you were working for CertainTeed?

11 A. Yes, I did.

12 Q. Did you ever take dust counts at any Keasbey and
13 Mattison or CertainTeed plant in Ambler in areas where
14 respirators were required?

15 A. Yes.

16 Q. If you did take a dust count in such an area and
17 you observed that respirators weren't being used --

18 Well, first of all, did you ever observe
19 respirators not being used in an area where they were
20 required?

21 A. Yes.

22 Q. Did that occur?

23 A. Yes, it did.

24 Q. And if you made such an observation, what would
25 you do?

26 A. I would talk to the manager, plant manager,
27 about it.

28 Q. And what would you tell them?

1 A. I would tell them there's a respirator program
2 and refer to it and tell them they weren't adhering to
3 it.

4 Q. They meaning whom?

5 A. They meaning the plant manager.

6 Q. You mentioned in your testimony that you learned
7 about possible link between asbestos and cancer through
8 some literature that you read.

9 Did you receive that literature in the course of
10 your employment at Keasbey and Mattison?

11 A. It was the type of literature that crosses your
12 desk.

13 Q. From where would you receive such literature?

14 A. General literature information pertaining to
15 occupational health.

16 Q. Was it one of your duties at Keasbey and
17 Mattison to read that literature?

18 A. Yes.

19 Q. Was that also true when you worked for
20 CertainTeed?

21 A. Yes, it was.

22 Q. Now, you mentioned you met with Dr. Knox who
23 represented Turner-Newall sometime in 1960 when you
24 worked for Keasbey and Mattison?

25 A. Yes.

26 Q. Why was it that Dr. Knox came to Keasbey and
27 Mattison to give you that information?

28 A. I understand he was visiting the country and

1 making several visits, and as a representative of
2 Turner-Newall he wanted to speak to management to inform
3 them of the information that he had -- that he was
4 disseminating in this country.

5 Q. Did you understand that there was a relationship
6 between Keasbey and Mattison and Turner and Newall?

7 A. Yes, I did.

8 Q. And what did you understand that relationship to
9 be?

10 A. I thought it was an English company that owned
11 Keasbey and Mattison.

12 Q. Sir, you've been shown quite a number of
13 exhibits this morning. Are those items that belong to
14 you?

15 A. They were in my file at home.

16 Q. When you say your file at home, were these items
17 that you took with you when you left the employ of
18 CertainTeed?

19 A. Yes, they were.

20 Q. Were they documents that were kept in the
21 ordinary course of business at CertainTeed?

22 A. It is my practice to keep copies of any
23 documents that I have, any letters, memos, and so on that
24 I've had anything to do with.

25 Q. Okay.

26 A. And I took it with me.

27 Q. Okay.

28 And that was part of your practice in the

1 ordinary course of business while you were employed at
2 CertainTeed?

3 A. Yes, it was.

4 Q. And the memos that you yourself wrote that are
5 in here that would report on a meeting, would they be
6 made relatively soon after the meeting itself occurred?

7 A. Usually, yes.

8 Q. And you'd prepare a separate report usually to
9 your company letting them know what your impressions or
10 -- were of the meeting or what you had learned from the
11 meeting?

12 A. Certain cover letter, yes.

13 Q. Okay. And that was done in the ordinary course
14 of your business and your job?

15 A. Yes.

16 Q. The respirator program, which was one of the
17 documents that was marked, that was something likewise
18 prepared in the ordinary course of business, was it?

19 A. Yes, it was.

20 Q. In the various letters that were written to and
21 from you and the memoranda, those likewise were issued in
22 the ordinary course of business?

23 A. Yes.

24 Q. At CertainTeed?

25 A. Yes.

26 Q. Or at Keasbey and Mattison, if you were employed
27 by them at that time?

28 A. Both places.

1 Q. When you went from Keasbey and Mattison to
2 CertainTeed, your papers and files that you had in your
3 job as industrial hygienist for Keasbey and Mattison, you
4 kept them, did you not?

5 A. Physically we stayed in the same place, so --

6 Q. You had the same office, same filing cabinets,
7 same papers?

8 A. Correct.

9 Q. And you did not, I assume, flush out of your
10 mind what you knew when you worked for Keasbey and
11 Mattison at the time you went to work for CertainTeed,
12 did you?

13 A. It was a continuance of the job.

14 Q. So what you knew on the day that you last worked
15 for Keasbey and Mattison was essentially what you knew
16 about asbestos on the first day that you went to work for
17 CertainTeed. Right?

18 A. Yes, it was.

19 Q. Were you ever an officer with Keasbey and
20 Mattison?

21 A. I was not an officer of Keasbey and Mattison.

22 Q. Were you ever an officer with CertainTeed?

23 A. I was not an officer of CertainTeed.

24 Q. During your employment with CertainTeed from
25 1962 to 1968, did the dust conditions improve, get worse,
26 or stay the same?

27 A. I would say --

28 Q. With respect to the asbestos cement pipe plants?

1 A. I would say they improved.

2 Q. Did CertainTeed remain a member of the ATI?

3 A. They did not.

4 Q. -- once it purchased the asbestos cement?

5 A. They did not. They had no reason to.

6 Q. Why did you not have a reason to remain a member
7 of the of the ATI?

8 A. They no longer had a textile plant.

9 Q. So how many times did you attend the ATI after
10 CertainTeed purchased the pipe plant in Ambler and --

11 A. I think it was twice.

12 Q. What were the years of the US public health
13 studies at the CertainTeed plants, if you know?

14 A. The years that they actually visited the plants
15 --

16 Q. Right.

17 A. -- or the years of their complete study?

18 Q. The year they actually visited the plant, you
19 said in St. Louis and Santa Clara?

20 A. I don't recall the exact year, but I would say
21 anywhere between '64 and '68 -- '67.

22 Q. Well, did the US public health governmental
23 agency decide to study the textile plants first?

24 A. I believe they did, yes, they did, because of
25 the higher exposure to asbestos in that area.

26 Q. What do you mean by higher exposure?

27 A. Well, the use of asbestos in textile plants is
28 generally 90 to 95 percent of the product is asbestos.

1 But the use of asbestos in, let's say, the asbestos
2 cement is only 14 percent.

3 Q. Mr. Horowitz, prior to coming to work for
4 Keasbey and Mattison in May of 1960, did you have any
5 knowledge concerning any possible hazards connected with
6 exposure to asbestos?

7 A. Yes, I did.

8 Q. Where did you acquire that knowledge?

9 A. From my training as an industrial hygienist for
10 the State of New York.

11 Q. And when did you acquire that knowledge?

12 A. Well, you don't -- it's difficult to put a date
13 on it, but --

14 Q. How about a decade?

15 A. Oh, decade, was definitely within my first year
16 of my working with the Division of Industrial Hygiene.

17 Q. And which year was that?

18 A. Which was 1947.

19 Q. And what knowledge did you acquire at that time?

20 A. The knowledge I acquired at the time and which I
21 retained throughout my working time until I joined
22 Keasbey and Mattison was that asbestosis was a
23 pneumoconiosis disease or a disease caused by dust in the
24 lungs, and that it had a threshold limit about five
25 million particles per cubic foot, which made it
26 approximately as toxic as silica at the time.

27 Q. And that was the information you brought with
28 you when you were employed --

1 A. Yes, it was.

2 Q. -- with Keasbey and Mattison?

3 A. Yes, it was.

4 Q. No one there told you this; you already knew
5 that?

6 A. No one there told me?

7 Q. At Keasbey and Mattison.

8 A. They didn't have to tell me that, right.

9 Q. Well, now, as I understand it, you testified
10 earlier that you would design this exhaust system for
11 individual machines?

12 A. Yes.

13 Q. Did you design one generally for the general
14 area, area in a building, or were you just limited, did
15 you just limit yourself to individual machines?

16 A. Mostly I would use my industrial hygiene skills,
17 if you want to call it that, to determine where there was
18 a need and where there was -- and where there was a need,
19 I would recommend to the company the need and give them
20 an estimate of the cost, and then design for picking up
21 the dust, right at the machine, and conveying it to a
22 dust collector, and then discharging the clean air
23 outside. That was my complete function.

24 Q. Okay. How did you determine where there was a
25 need through these dust counts that you took?

26 A. Through the dust counts, yes.

27 Q. And once you -- I gather you would determine
28 that there was a need, if you took dust counts which

1 exceeded the then threshold limits. Is that right?

2 A. Exactly.

3 Q. Well, take the --

4 By the way, do you recall when the last day was,
5 or the month at least, that you worked with Keasbey and
6 Mattison and when you started for CertainTeed? I don't
7 think you had testified to that before.

8 A. I think it was June of '62, anywhere between
9 April and June of '62.

10 Q. Well, now, I think you testified that in
11 September of 1960 you attended a meeting with a Dr. Knox?

12 A. Yes.

13 Q. I believe you testified that he informed you and
14 the people who were there either that there was an
15 association between asbestos and cancer, or I'm not sure
16 whether you said there was a suspected association.
17 Which was it?

18 A. I think it was very positive that there was an
19 association.

20 Q. Okay. Now, that --

21 And I think you said the word mesothelioma came
22 up at that time?

23 A. That's right.

24 Q. And that was the first time that you had ever
25 heard that word?

26 A. That's true.

27 Q. Well, now, as a result of this information you
28 obtained about mesothelioma and cancer, did you go out

1 and acquire any new knowledge that you needed to design
2 your dust control system?

3 A. There was no new knowledge needed. The
4 acceptance of -- of cancer and mesothelioma in
5 association with asbestos was not taken verbatim merely
6 because a Dr. Knox or a Dr. Selikoff said there was. The
7 whole community, industrial hygiene community, or
8 technical community, scientific community said, well, you
9 know, now, there are suspicions; let's do further
10 studies; let's find proof. It wasn't an immediate type
11 of thing.

12 Did I respond to your question? I may have
13 digressed.

14 Q. I think my basic question was, did you feel the
15 need to go out and acquire any more knowledge about what
16 you were doing in light of the fact you had now heard the
17 word "mesothelioma" and now heard about the possible
18 connection between asbestos and cancer?

19 A. There was no need to get any more skills in the
20 design of industrial exhaust systems.

21 Q. You already had, as far as you were concerned,
22 sufficient skills --

23 A. Yes.

24 Q. -- in designing industrial dust control systems
25 --

26 A. Right.

27 Q. -- to keep dust down whenever the dust exceeded
28 allowable limits?

1 A. No matter whether it caused asbestosis or
2 cancer, there's a large question about mesothelioma.

3 Q. And I think one of your memos talks about
4 informing the foreman about hazards, does it not?

5 A. Yes, it does.

6 Q. Do you know whether that was actually done?

7 A. No, I do not.

8 Q. Now, whose responsibility was it to do that
9 informing?

10 A. My direction was to the plant manager. It was
11 his responsibility.

12 Q. Whose idea was it to make the plant manager
13 responsible to do that? Was that yours?

14 A. My direction was to make these memos and send it
15 to the plant manager. So it was Mr. Spedding, my boss's
16 direction.

17 Q. Well, did you have any feeling of concern at
18 that time that, well, maybe not telling the right people?

19 A. It was out of my responsibility.

20 Q. Did you feel that you yourself needed any
21 additional warnings from anyone about the hazards of
22 asbestos or were you satisfied that you knew that there
23 were such hazards?

24 A. I was as knowledgeable, I feel, as anybody else
25 in my area of expertise, about the hazards of asbestos.
26 The knowledge which came, let's say, slowly to me also
27 came slowly to the rest of the community.

28 Q. And did you know, sir, at that time at what

1 level or how many particles per cubic feet of dust in the
2 air would have to be reached for you to actually see it
3 in the air, if you knew?

4 A. Generally if you see it, it's an area that you
5 would want to determine with instruments, and usually it
6 depends on the lighting, but it's a very subjective
7 method.

8 Q. If you could see dust in the air, did that
9 automatically mean that you were exceeding five million
10 particles per cubic foot?

11 A. No, it did not. Definitely not.

12 Q. Okay. And the only way that you could make that
13 determination, it was your understanding, was through the
14 use of certain machines, and I think you mentioned
15 certain types of impingers?

16 A. Yes.

17 Q. Could you describe that Exhibit 29 -- pardon me.
18 Could you describe what Exhibit 29 is please?

19 A. It is a memo from me to Mr. Davis who is vice
20 president of the pipe division, written on November 10
21 and reviewed the commentary made by Dr. Shaw as a result
22 of our attendance at the meeting at the conference on
23 biological effects of asbestos at the New York Assembly
24 of Science.

25 Q. And was this memorandum prepared by you in the
26 normal course of business as an employee of CertainTeed?

27 A. Yes, it was.

28 Q. Who was Mr. JL Anderson whose name appears on

1 **this memorandum?**

2 A. Can you tell me where it appears?

3 **Q. Right under Mr. Lanz's name. On the --**

4 A. Yes, I believe at the time he was made chief
5 engineer in replacing Spedding in our staff office and,
6 therefore, he would have been my superior.

7 **Q. Was your immediate superior in November --**

8 Was he your immediate superior in November of
9 **1964?**

10 A. For that time, very short time. He later was
11 manager of one of the pipe plants.

12 **Q. Do you ever recall at any time seeing any**
13 **abstracts from IHF?**

14 A. From that time on, I received all of them.

15 **Q. From when you say from 1964 forward?**

16 A. From 1960 forward, yes.

17 **Q. And would that include the period of time where**
18 **you became an employee of CertainTeed?**

19 A. Yes, it was.

20 **Q. And approximately how often did you receive**
21 **abstracts specifically concerning asbestos health hazards**
22 **from IHF?**

23 A. IHF does not publish anything specifically
24 concerning anything in particular unless they have a
25 symposium or something. Most of their abstracts cover --
26 they have a library, they cover occupational disease and
27 industrial hygiene, related subjects, and they don't
28 specialize, in other words. So we have to cull out an

1 abstract on asbestos.

2 Q. And upon what basis can you say that they did
3 not send scientific abstracts dealing with asbestos
4 disease?

5 A. I did not say that. I don't understand your
6 question.

7 Q. Let me go back.

8 Your statement was, I believe, that IHF did not
9 send specific abstracts creating only the subject of
10 asbestos-related disease. Is that correct?

11 A. Only if they had a symposium on asbestos-related
12 disease. But, otherwise, the asbestos would be on every
13 subject that was -- that came out within that period of
14 time.

15 Q. Well, are you aware today as to whether IHF ever
16 sent abstracts to its members that specifically dealt
17 only with the subject of asbestos disease?

18 A. Definitely they did.

19 Q. Now, when was the earliest recollection you have
20 of specifically receiving such abstracts?

21 A. Almost immediately, and this raised the question
22 of the relationship between cancer and asbestos, almost
23 immediately after I joined the company.

24 Q. Now, if I understand correctly from your
25 testimony this morning, up until 1960 throughout your
26 experience with the state of New York, the city of New
27 York, you had no knowledge of any carcinoma hazard being
28 associated with asbestos exposure?

1 A. I was not aware of that, yes.

2 Q. Now, when you got to Keasbey and Mattison and
3 began receiving the specific IHF abstract relating to
4 asbestos disease, were there abstracts from years prior
5 to the time you came at Keasbey and Mattison?

6 A. There were a few.

7 Q. Okay.

8 MR. BRATT: And that ends volume one, your
9 Honor.

10 And then we continue with the next day they did
11 a deposition, I think, on February 2.

12 THE COURT: Do you have that?

13 MR. JONES: Yes, your Honor. I have a sticky on
14 it. Is there a pink sticky?

15 THE COURT: Yes, I have it.

16 MR. BRATT: So February 2, 1982, from the same
17 case, your Honor.

18 THE COURT: Yes. Thank you.

19 So the testimony continues. You may inquire.
20 BY MR. JONES:

21 Q. Is mesothelioma, to your knowledge, a form of
22 carcinoma?

23 A. Yes.

24 Q. While you were employed at Keasbey and Mattison,
25 did you ever have occasion to learn that there was not or
26 there's a -- or there's a body of medical or scientific
27 literature that suggested that you could not utilize the
28 threshold limit value or TLV when you're talking about a

1 **risk of carcinoma?**

2 A. Nobody ever, in my knowledge, discussed
3 threshold limit related to -- threshold limits in general
4 related to cancer in general. So, therefore, nobody
5 discussed threshold limits of asbestos to cancer in
6 general. When it became, let's say, if and when it
7 became accepted that asbestos was related to cancer, if
8 and when it became asbestos -- accepted, the
9 understanding would be that the ACGIH or anybody that
10 would create threshold limit values would -- would not
11 use a threshold limit value for a cancer-producing
12 material. It would be zero.

13 **Q. And why would it be zeros opposed to some**
14 **standard above zero?**

15 A. Because they don't know what quantity will cause
16 cancer.

17 **Q. How --**

18 A. And it still exists as a threshold limit, by the
19 way. There is a threshold limit for asbestos now.

20 **Q. That is correct, but does the threshold limit**
21 **exist insofar as the development of cancer is concerned?**

22 A. As I said, they do not -- they do not relate it
23 to cancer, threshold limit.

24 **Q. Now, that was as to your knowledge as of the**
25 **time you were employed by Keasbey and Mattison --**

26 Can you tell me at the time that you became
27 employed by CertainTeed Corporation what was your
28 position with CertainTeed?

1 A. I continued as a desk control engineer doing
2 industrial hygiene work.

3 Q. Now, at any time while you were employed by the
4 CertainTeed Corporation, did you ever have occasion to
5 learn that the threshold limit value might not be
6 applicable when dealing with carcinoma?

7 A. The same answers I gave before. It was -- there
8 was no discussion about threshold limit relating to
9 cancer.

10 Q. So you --

11 A. That I was aware of.

12 Q. Now. Let me ask you again the same questions
13 with regard to mesothelioma.

14 First when you were employed by Keasbey and
15 Mattison, did you have any knowledge or understanding
16 that threshold limit value was applicable when discussing
17 mesothelioma?

18 A. The same answer as before. There was no
19 relationship between -- or discussion of a relationship
20 between threshold limit and mesothelioma as a cancer.

21 Q. No discussion that you had with anyone?

22 A. That I knew of.

23 Q. And, again, during the period of time that you
24 were employed by CertainTeed, would your answer be the
25 same?

26 A. Same thing.

27 Q. Now, you stated that at least as of September of
28 1960 you became aware of the fact that it was the

1 European experience, more specifically the English
2 experience, that there was a relationship between cancer
3 and exposure to asbestos through your discussions with
4 Dr. Knox. Is that correct?

5 A. That was the information Dr. Knox passed on to
6 us.

7 Q. Did you have any reasons to doubt the -- that
8 discussion by Dr. Knox?

9 A. I never doubt a professional. I just absorb the
10 information and use it if I can.

11 Q. Now, moving forward in time, once you were hired
12 as an employee of CertainTeed Corporation as an
13 industrial hygienist, in addition to a dust control
14 engineer did you advise any CertainTeed employees of the
15 cancer or mesothelioma risks that they may face?

16 A. You're talking about employees that may face
17 that, but not management. I was advised -- strike that.

18 I advised management, of course. But you don't
19 mean management?

20 Q. No. I'm talking about employees.

21 A. Employees, no, I did not.

22 Q. Management was already aware that these two
23 diseases could exist by virtue of their attendance at
24 that September meeting with Dr. Knox?

25 A. Not the CertainTeed people. They were not
26 there.

27 Q. Now, and that is the reason, therefore, that you
28 advised CertainTeed management of the --

1 A. New management.

2 Q. -- new management of what had occurred at that
3 meeting with Dr. Knox. Is that correct?

4 A. I don't know if I advised them of a particular
5 meeting with Dr. Knox, but I advised them of the existing
6 knowledge or questions concerning cancer and mesothelioma
7 at the time. That's management.

8 Q. Can you tell me whether CertainTeed Corporation
9 had a medical director at any time that you were employed
10 by it?

11 A. None that I know of.

12 Q. As of January 1963 at CertainTeed was there a
13 concern with particular problems that could arise to
14 employees because of exposure to asbestos?

15 A. If there wasn't a concern, I spent my time
16 between '60 and '63 uselessly.

17 Q. Okay.

18 A. My reports were obviously directed in that
19 direction.

20 Q. Let me refer you now to -- again, I don't have
21 an exhibit number on the top. It's an August 11,
22 1965, memorandum.

23 A. I have that. That's number 25?

24 Q. I would like to refer you to page two, and this
25 discusses the chest x-ray program. Paragraph three days
26 role of the plant (local physician) --

27 A. What paragraph?

28 Q. Last paragraph under No. 3. Each plant must be

1 associated with a competent doctor who is interested in
2 industrial medicine and sympathetic to industry's point
3 of view so that he will screen all applicants at
4 pre-employment physicals and reject those who would be
5 involved in accidents or potential claims.

6 And then it goes on to make a description of
7 what type of claims might be made.

8 Can you tell me why -- why was it felt necessary
9 to get a doctor who was sympathetic to the viewpoint of
10 industry as opposed to someone who's objective and
11 competent?

12 A. The choice of word, sympathetic, was a very poor
13 choice of words. I admit that.

14 In retrospect and even at the time what I really
15 meant was an understanding, one that understands the
16 company's problems.

17 MR. JONES: That concludes --

18 THE COURT: Does that conclude the reading?

19 MR. BRATT: Yes.

20 THE COURT: Very good. That's the conclusion of
21 that reading.

22 MR. BRATT: Your Honor, little housekeeping.
23 We'd like to move into evidence the exhibits that were
24 referenced in the two Mr. Horowitz depositions, and for
25 the record the first one is Exhibit 372, and I don't know
26 if you have it before you, but I can hand it up to you.

27 THE COURT: I'm going to ask you to recite them,
28 and then I'll find out if there's any objection. If

1 there is, we'll take care of it.

2 MR. BRATT: Okay. The next one is Exhibit 377,
3 the next one is Exhibit 391. The next one is Exhibit
4 392. The next one is Exhibit 393. The next one is
5 Exhibit 394, 395, 396, and Exhibit 412.

6 THE COURT: Any objection, Mr. Berfield?

7 MR. BERFIELD: CertainTeed does not object.

8 THE COURT: Any objection?

9 MS. GAMBINO: No objection.

10 THE COURT: Any objection?

11 MS. VOTAW: No objection, your Honor.

12 MR. BRATT: Thank you, your Honor. I'm not
13 going to show them all and publish them all now, but I
14 would like to publish or at least let the jury read
15 Exhibit 412, which was just admitted into evidence.

16 THE COURT: You can put it up on the screen if
17 you'd like.

18 MR. BRATT: I have copies of it because it's
19 kind of difficult to read the copy, if that's
20 permissible.

21 THE COURT: Any objection?

22 MR. BERFIELD: No. Is this the 1964 --

23 THE COURT: The way we'll do this is that you
24 can pass them out and take a little bit to look at them.
25 Then we'll collect them. It'll be received into
26 evidence, but this allows you to do that now, and we'll
27 give you time to do that, and then we'll pass those
28 around. You can peruse them. Be assured it will come

1 into the jury room at the time.

2 I'll ask counsel to step around so we can see
3 how we want to do the rest of the day.

4 (Plaintiff's Exhibits 372, 377, 391, 392, 393,
5 394, 395, 396, 412 were received in evidence.)

6 (Discussion at the bench.)

7 THE COURT: Once you've had a chance to look at
8 that, just want to let you know we'll have one reading
9 from an interrogatory and then we have a brief video
10 deposition to finish up the day. Once you feel you've
11 had a chance to peruse that, we'll collect them. Just
12 give us the high time. Recognizing that's in evidence,
13 it'll come back to you at the end of the case too.

14 We'll collect those now, and counsel will have a
15 chance to, in closing arguments, refer to them as they
16 choose, and then you'll have them in the jury room.

17 This is the "Responses of CertainTeed
18 Corporation to Plaintiffs' Master Interrogatories and
19 Requests for Production" in a proceeding in Texas called
20 in Re: Asbestos Litigation. And the interrogatories
21 were responded to, is it correct, by Curtis M Ponz,
22 P-o-n-z, associate general counsel and assistant
23 secretary of CertainTeed Corporation.

24 MR. BRATT: Your Honor, I don't know if your
25 copy has a verification, but I have one right here.

26 THE COURT: If you give me the date of
27 verification, I'll mention that this Curtis M Ponz, the
28 associate counsel and assistant secretary, subscribed his

1 name to this statement, Curtis M Ponz, being duly sworn
2 according to the law, says he is associate general
3 counsel and assistant secretary of CertainTeed
4 Corporation and is duly authorized to make this
5 verification on its behalf and that the facts set forth
6 in the foregoing answers to plaintiffs' master
7 interrogatories and requests for production are true and
8 correct to the best of his knowledge, information, and
9 belief, CertainTeed Corporation by Curtis M Ponz,
10 associate general counsel and assistant secretary, and
11 subscribed before Barbara Sauerby, S-a-u-e-r-b-y, and her
12 notary seal is affixed on the 27th day of January 1995.

13 And you may proceed whenever you'd like.

14 MR. BRATT: Thank you, your Honor. I'll be
15 reading --

16 Before we do the video that you mentioned, I'll
17 be reading just one interrogatory response, but it's
18 fairly long.

19 "Interrogatory No. 4: Identify by name
20 each product containing asbestos fibers that
21 defendant or any of its predecessor or
22 subsidiary companies at any time manufactured or
23 sold.

24 Response: Roof cements and coatings and
25 foundation coating:

26 1. Asbestos roof coating. First placed
27 on the market prior to 1930. Withdrawn from the
28 market in 1982. It was composed of asphalt,

1 mineral spirits and approximately 6.7 percent 7M
2 chrysotile asbestos fiber. It was designed for
3 use as a coating for smooth surface asphalt
4 roofs.

5 2. Blind nailing cement. First placed
6 on the market prior to 1930. Withdrawn from the
7 market in 1979. It was composed of asphalt,
8 mineral spirits and approximately 13 percent 7M
9 chrysotile asbestos fiber. It was designed for
10 use in sealing the laps of roll roofing applied
11 with no exposed nails.

12 3. Plastic cement. First placed on the
13 market prior to 1930. Withdrawn from the market
14 in 1983. It was composed of asphalt, mineral
15 spirits, pulverized limestone and approximately
16 18 percent 7K chrysotile asbestos fiber and 18
17 percent 7M chrysotile asbestos fiber. It was
18 designed for flashing, caulking, heavy duty roof
19 repairs and patching roof flashings.

20 4. Sealing Cement. First placed on the
21 market prior to 1930. Withdrawn from the market
22 in 1976 due to economic considerations (poor
23 profit margins). It was composed of asphalt,
24 mineral spirits and approximately 29 --

25 THE COURT: I'm sorry. Did you read that full
26 response?

27 MR. BRATT: It was supposed to be redacted, your
28 Honor.

1 THE COURT: Okay. Thank you. By agreement.
2 Sorry. Why don't you just read that over again. I was
3 just following along. Start with No. 4 please.

4 MR. BRATT: "4. Sealing cement. First placed
5 on the market prior to 1930. Withdrawn from the
6 market in 1976. It was compose of asphalt,
7 mineral spirits and approximately 29 percent 7M
8 chrysotile asbestos fiber. It was designed for
9 sealing down asphalt shingles.

10 5. Cold processed cement. First placed
11 on the market in approximately 1940. Withdrawn
12 from the market in 1976. Replaced by cold
13 process asphalt. It was composed of asphalt,
14 mineral spirits, and approximately 6.7 7M
15 chrysotile asbestos fiber. It was designed for
16 use in applying rolls of smooth roofing to
17 obtain a built-up roof.

18 6. Cold process asphalt. First placed
19 on the market in 1967. Withdrawn from the
20 market in 1983. It was composed of asphalt,
21 mineral spirits, and approximately 6.7 percent
22 7M chrysotile asbestos fiber. Cold process
23 asphalt was the name given to cold processed
24 cement subsequent to 1967.

25 7. Stabilized roof coating. First
26 placed on the market in approximately 1940.
27 Withdrawn from the market in 1967. It was
28 composed of asphalt, mineral spirits and

1 approximately 6.7 percent 7M chrysotile asbestos
2 fiber. It was designed for coating cold process
3 smooth surface built-up asphalt roofs.

4 8. Wet seal plastic cement. First
5 placed on the market in 1961. Withdrawn from
6 the market in 1983. It was composed of asphalt,
7 mineral spirits, an amine wetting agent,
8 pulverized limestone and approximately 18
9 percent 7K chrysotile asbestos and 18 percent 7M
10 chrysotile asbestos. It was designed for use in
11 providing adhesion to wet or damp surfaces in
12 making heavy duty repairs to wet roofs.

13 9. Asphalt Fibered Emulsion. First
14 placed on the market sometime during the 1950s.
15 Withdrawn from the market in 1983. It was
16 composed of asphalt, water, clay, electrolyte
17 and an unknown quantity of asbestos fiber. It
18 was designed for coating smooth surface asphalt
19 roofs.

20 10. Fibered Aluminum Roof Coating.
21 First placed on the market in 1951. Withdrawn
22 from the market in 1979. It was composed of
23 asphalt, mineral spirits, aluminum powder and an
24 unknown quantity of asbestos fiber. It was
25 designed for coating smooth surface asphalt
26 roofs.

27 11. Asphalt Foundation Coating. First
28 placed on the market in approximately 1940.

1 Withdrawn from the market in 1981. It was
2 composed of asphalt, mineral spirits, and
3 approximately 6.7 7M chrysotile asbestos fiber.
4 It was designed for coating the exterior of
5 foundations before backfilling.

6 At some point CertainTeed commenced
7 affixing its logo (C and T with the stem of the
8 T inserted sideways into the C) to the
9 containers in which its roof coatings and
10 cements and foundation coating were packaged.

11 The next section: Built-up roof --
12 strike that. Built-up Roofing Ply Sheet:

13 12. No. 15 Perforated Saturated Asbestos
14 Felt. First placed on the market in 1968.
15 Withdrawn from the market in 1976. It was
16 composed of asphalt, organic fiber and 58
17 percent asbestos fiber (type and grade unknown.)
18 It was designed for the use as plies for built-up
19 roofs and flashing.

20 13. Asbestos Base Sheet. First placed
21 on the market in 1968. Withdrawn from the
22 market in 1976. It was composed of asphalt,
23 organic fiber, glass fiber, pulverized
24 limestone, pulverized talc, and 20 percent
25 asbestos fiber (type and grade unknown). It was
26 designed for use as the first ply in applying a
27 built-up roof.

28 14. Asbestos base flashing. First

1 placed on the market in 1968. Withdrawn from
2 the market in 1976. It was composed of asphalt,
3 organic fiber, pulverized limestone, pulverized
4 talc, 19 percent asbestos fiber (type and grade
5 unknown), and either glass, hemp, or jute fiber.
6 It was designed for use as one ply in installing
7 flashing.

8 15. Asbestos Cap Sheet (mineral
9 surfaced). First placed on the market in 1973.
10 Withdrawn from the market in 1976. It was
11 composed of asphalt, organic fiber, pulverized
12 limestone, pulverized talc, coarse crushed rock,
13 and 13.8 percent asbestos fiber (type and grade
14 unknown.) It was designed for use as the top
15 ply on built-up roofs.

16 The next section: Asbestos Cement Siding
17 Shingles.

18 No. 16. Asbestos-Cement Siding Shingles
19 (manufactured by others). First placed in the
20 market in approximately 1950. Withdrawn from
21 the market in approximately the early 1970s.
22 Asbestos-cement siding shingles were flat slabs
23 which came in various colors (type grade

1 placed on the market in 1968. Withdrawn from
2 the market in 1976. It was composed of asphalt,
3 organic fiber, pulverized limestone, pulverized
4 talc, 19 percent asbestos fiber (type and grade
5 unknown), and either glass, hemp, or jute fiber.
6 It was designed for use as one ply in installing
7 flashing.

8 15. Asbestos Cap Sheet (mineral
9 surfaced). First placed on the market in 1973.
10 Withdrawn from the market in 1976. It was
11 composed of asphalt, organic fiber, pulverized
12 limestone, pulverized talc, coarse crushed rock,
13 and 13.8 percent asbestos fiber (type and grade
14 unknown.) It was designed for use as the top
15 ply on built-up roofs.

16 The next section: Asbestos Cement Siding
17 Shingles.

18 No. 16. Asbestos-Cement Siding Shingles
19 (manufactured by others). First placed in the
20 market in approximately 1950. Withdrawn from
21 the market in approximately the early 1970s.
22 Asbestos-cement siding shingles were flat slabs
23 which came in various colors (type, grade,
24 and quantity of asbestos fiber unknown). They
25 were designed for use on the exterior of homes.

26 Asbestos-Cement Pipe:

27 No. 17. Asbestos-Cement Pipe (may have
28 carried the brand name Fluid-Tite) --

1 F-l-u-i-d-t-i-t-e.

2 First placed on the market on June 1,
3 1962. CertainTeed ceased and manufacture of
4 asbestos-cement pipe in 1992. The asbestos
5 fiber was bound into the asbestos-cement pipe by
6 a combination of cement, silica, and water
7 through an autoclave (high pressure steam
8 atmosphere) curing process. It contained the
9 following amounts of asbestos by weight.

10 Pressure pipe had 15 to 20 percent.

11 Sewer pipe 10 to 15 percent.

12 Irrigation pipe had 11 to 20 percent.

13 Of the total asbestos content of the
14 asbestos-cement pipe, anywhere from zero to 24
15 percent was crocidolite (blue) fiber by weight,
16 with the remaining fiber being chrysotile
17 (white). The ratio of these fibers varied in
18 accordance with various factors, including type
19 of pipe and physical dimensions.

20 Asbestos-cement pipe was used for the
21 underground transmission of water and sewage.
22 No packaging was used in connection with this
23 product. The sewer pipe contained black
24 lettering, including the name, in quotes,
25 CertainTeed, with the C and T capitalized. The
26 pressure pipe contained either black or orange
27 lettering, including the name, in quotes,
28 CertainTeed, with the C and T capitalized, and

1 the irrigation pipe had black lettering
2 including the name, quote, CertainTeed, with the
3 C and T capitalized. It was installed in the
4 form in which it was sold except to the extent
5 that it may have required machining in order to
6 meet a specific length.

7 Asbestos-cement pipe was cylindrical in
8 nature and -- shape. I'm sorry. Cement gray in
9 color with a smooth interior, relatively rough
10 textured exterior, with ends machined to give
11 dimensions. Pipe lengths were connected with an
12 asbestos-cement coupling with two rubber rings
13 contained in machined grooves. The temperature
14 limit was 200 degrees Fahrenheit.

15 The next section is Joint Treating Compound.

16 Joint Treating Compound (may have carried
17 the brand name Bestwall). First placed on the
18 market 1937 sales of this product were
19 discontinued on June 30, 1956, when CertainTeed
20 sold its gypsum assets. The composition is
21 unknown other than it is believed to have
22 contained approximately 4 percent asbestos fiber
23 by weight. Joint treating compound was applied
24 to the joints of gypsum wallboard.

25 The next section is Acoustical Plaster.

26 Acoustical plaster (carried the tradename
27 Kalite). Sales commenced sometime between 1936
28 and 1940, but the product may not have been sold

1 in asbestos-containing form until approximately
2 1943. Sales of this product were discontinued
3 on June 30, 1956, when CertainTeed sold its
4 gypsum assets. This plaster was a hard plaster
5 and is believed to have contained approximately
6 two percent asbestos by weight.

7 Now, your Honor, that concludes the
8 interrogatory four.

9 THE COURT: Yes. Very good.

10 MR. BRATT: Might I suggest that
11 Mr. Kittilstad's deposition is going to take quite a bit
12 longer.

13 THE COURT: We'll adjourn.

14 You won't protest 12 minutes before the end of
15 the day? So be here at 9:30 tomorrow. We'd be very
16 grateful. We're right on track. We've been discussing
17 scheduling.

18 Please remember not to discuss the case or form
19 or express any opinion until these matters are finally
20 submitted to you.

21 Thank you. Have a good evening, folks.

22 (Proceedings adjourned at 4:18 p.m.)
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF MARIN) ss

3
4
5 CERTIFICATE OF OFFICIAL REPORTER
6

7
8 I, BARRIE L. HART, C.S.R. #6954, hereby
9 certify:

10 THAT on Thursday, April 17, 2014, at the hour
11 of 9:30 a.m thereof, I reported in shorthand writing the
12 proceeding had in the matter of Pamela J. O'Bryan versus
13 A.H. Voss Company, et al., No. MSC13-01926.

14 THAT I thereafter caused my said shorthand
15 writing to be transcribed into longhand typewriting.

16 THAT the foregoing pages 755-779 and 800-845
17 constitute and are a full, true, correct and accurate
18 transcription of my said shorthand writing and a correct
19 and verbatim record of the proceedings so had and taken,
20 as aforesaid.

21 DATED this 18th day of April, 2014.
22

23
24
25 BARRIE L. HART, CSR 6954
26
27
28

REPORTER'S CERTIFICATE

I, DONNA J. BLUM, CSR No. 11133, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and
statements made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken for
pages:

780-799 and 846-887 of Volume VIII;

I further certify that I am not a relative or
employee of any attorney of the parties, nor
financially interested in the action.

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

Dated this day of , 2014.

DONNA J. BLUM, CSR No. 11133