

1 We have labeled them with each juror's
2 number. They are all identical, but apparently there
3 is some confusion.

4 Your Honor, as I mentioned, this is the
5 deposition of John Thomas. We apologize in advance.
6 This is a lengthy reading.

7 This will be our longest deposition reading,
8 I think, for the trial, so please bear with us.

9 This deposition was taken on April 3rd,
10 1991.

11 THE COURT: You didn't think we wouldn't
12 bear with you, did you?

13 (Whereupon, laughter ensued.)

14 MR. SMITH: Thank you, Your Honor, I
15 appreciate that. This one was also taken like the
16 last one in the United States District Court for the
17 Eastern District of Virginia.

18 Again, taken in the cases captioned in re:
19 All Asbestos Cases.

20 READING OF DEPOSITION OF JOHN HENRY THOMAS, II
21 TAKEN ON APRIL 3, 1991

1 (Whereupon, the questions were read by Mr.
2 Smith and Mr. McGowan and the answers were read by Mr.
3 Ignatowski.)

4 BY MR. SMITH:

5 Q Mr. Thomas, would you please state your full
6 name and address.

7 A John Henry Thomas, II. My Naples address is
8 Moorings Park, 106 Moorings Park Drive.

9 My Toledo address is --

10 Q Is that your current address?

11 A I have got two places. A summer place, we
12 live there most of the time. 296 East River Road,
13 Perrysburg, Ohio.

14 BY MR. MCGOWAN:

15 Q What is your date of birth?

16 A 19th of September 1909, I guess it was.

17 Q How old are you today?

18 A Forty-three.

19 Q Eighty-three?

20 A Eighty-three. I have been 43 in the last
21 business.

1 BY MR. SMITH:

2 Q Mr. Thomas, what is your educational
3 background?

4 A University of Illinois, engineering degree
5 in ceramics, ceramics engineering actually.

6 BY MR. MCGOWAN:

7 Q When did you graduate?

8 A 1931.

9 Q At some point in time did you become
10 employed by the Owens-Corning Fiberglas Corporation?

11 A The day I graduated, 1931.

12 Q Owens-Corning?

13 A Owens-Corning. In the latter part of 1931
14 when the company was formed, Owens-Corning was
15 formed.

16 Q If the company was formed in 1938, then that
17 would be the year you became --

18 A Right. I went from Owens-Illinois right
19 into -- right from Owens-Illinois right into Owens-
20 Corning.

21 BY MR. SMITH:

1 Q Okay. I am sorry. I probably misled you
2 there.

3 After college, what was your first job?

4 A As a trainee with the Owens-Illinois Glass
5 Company.

6 Q You worked with Owens-Illinois Glass Company
7 until the Owens-Corning Fiberglas Company was formed?

8 A Right.

9 Q Do you know anything about the circumstances
10 of how the Owens-Corning company was formed?

11 A Owens-Illinois was doing research on what
12 you can make out of glass besides bottles and Corning
13 was doing research on glass, things they could make
14 other than the Pyrex and top of the stove areas and
15 specialties like Steuben and other things. They
16 wanted to expand in other markets.

17 We were doing research separately, market
18 research, some manufacturing, early manufacturing, and
19 Owens-Illinois and Corning got together and said this
20 is silly, why don't we put our heads together and
21 develop these products.

1 The same kind of research in these things,
2 why don't we go together.

3 Q This is the Owens-Illinois Glass Company and
4 the Corning Glass Company?

5 A Right.

6 Q So those two companies got together and
7 formed the Owens-Corning Fiberglas Corporation?

8 A Right.

9 Q How was it that you changed from being an
10 employee of Owens-Illinois to being an employee of
11 Owens-Corning?

12 A They said, do you want to go with us? And I
13 said, yes, with the company.

14 Q Did your place of work change?

15 A No.

16 Q Where were you working before when your job
17 was for Owens-Illinois?

18 What was the physical location of your job?

19 A I started out in Alton, Illinois, and I
20 worked -- I started on the first of July, worked until
21 the 3rd, took the 4th of July holiday and then they

1 had a four-day shutdown cleaning up the place and
2 oiling the equipment and getting everything in shape.
3 So I worked three days, had four days off, shut down
4 on the holiday, came back the following Monday.

5 So I worked about a week or so, I was
6 packing bottles as a trainee, and they said -- when
7 the guy came by the line said, when you are through,
8 go up and see Mr. Levis who was one of the top people
9 at Owens-Illinois.

10 I went up to see him and he said nice to
11 have you here, we are transferring you to Evansville,
12 Indiana, we are starting a research organization, we
13 are going to develop things out of glass other than
14 bottles, you are the first guy on the job, and if you
15 go to the third desk, the guy will give you a ticket
16 and \$100 travel expense and you are on your way, nice
17 to have you, good day.

18 Q What was the city where you were located
19 when you became employed by Owens-Corning as opposed
20 to Owens-Illinois?

21 What city was that?

1 A Newark, I think.

2 Q Have you been working for Owens-Illinois in
3 that same city?

4 A Yes.

5 Q And what were you doing for Owens-Illinois
6 in Newark? Is this Newark, New Jersey, or Newark,
7 Ohio?

8 A Ohio.

9 Q Newark, Ohio. What were you doing for
10 Owens-Illinois in Newark, Ohio, immediately when your
11 paycheck started coming from Owens-Corning?

12 A Same damn thing, doing research, same
13 location, same people, same everything, just changed
14 the name.

15 Q Now, as far as you know then, the only thing
16 that changed was the name on the paycheck that you
17 received?

18 A Right.

19 Q You continued to work with the same Owens-
20 Illinois people who now were working for Owens-
21 Corning?

1 A Right.

2 Q You were --

3 A Plus a few people who came from Corning.

4 Q Who came from Corning Glass?

5 A Yes.

6 Q So Corning Glass and Owens-Illinois Glass

7 used their own employees to form this new company

8 Owens-Corning?

9 A Yes.

10 Q Correct?

11 A Yes.

12 Q Did you know anything about the financial

13 structure of Owens-Corning as to how much of the

14 company was owned by Owens-Illinois and how much was

15 owned by Corning Glass?

16 A Half and half.

17 Q So 50 percent of the stock was owned by

18 Corning Glass?

19 A Right.

20 Q And 50 percent of the stock was owned by

21 Owens-Illinois?

1 A Right.

2 BY MR. McGOWAN:

3 Q So 50 percent of the board of Owens-Corning
4 Fiberglas Corporation was composed of Owens-Illinois
5 Glass people?

6 A Right.

7 Q Now, do you know for how long this continued
8 in this relative percentage?

9 A As I remember, and I may not be accurate on
10 the timing, along the line the government said this is
11 a fine company and all, but our only problem in
12 improving it is that we have got the making of a
13 monopoly, we think that you ought to take the consent
14 decree, which meant that you had to license people,
15 show them, give them know-how and show them where to
16 sell it, where to market it, you know, had to give
17 free, not free licenses, but you had to give licenses
18 for competitors or for whoever wanted one.

19 Of course, quite a few people wanted one.
20 Johns-Manville, Libby Owensford and a number of other
21 people thought, well, what the hell, me, too, let's go

1 and find out about it, at least have a look.

2 That same time or shortly a little bit one
3 way or another, they said that they had to get a new
4 board, so we had to go out and get an outside board
5 and it had -- Corning people went off the board and
6 Owens-Illinois people went off the board and Owens-
7 Corning people who were on the board went off the
8 board, so we had an outside board that was not just
9 glass people, but a number of other people.

10 Q Now, while you were at Owens-Illinois in
11 the 1930s, did you ever have occasion at that time
12 dealing with the subject of asbestos?

13 A Never was a factor, never heard that.

14 Q Were you dealing with bottles at that time?

15 A We were dealing with glass. We were making
16 fibers. We were making fillers. We were making
17 insulation, everything made out of glass.

18 BY MR. SMITH:

19 Q In the 1940s -- by the 1940s, you were
20 working for Owens-Corning, correct?

21 A Right.

1 Q And you began that employment with Owens-
2 Corning in 1938?

3 A Right.

4 Q When the company was formed?

5 A The company was formed, yes.

6 BY MR. MCGOWAN:

7 Q Now in the late '30s and early '40s, what
8 was your job for Owens-Corning?

9 A What dates are we talking about?

10 Q Well, if you would review with me what your
11 jobs were for Owens-Corning from the late 1930s to the
12 late 1940s, let's take that 10-year period.

13 You have brought a document with you this
14 morning?

15 A Only yours.

16 Q You have a document, a handwritten list that
17 you are referring to.

18 A Well, this is where -- when I was in Alton,
19 Evansville, Columbus, Newark, Toledo, New York,
20 California.

21 Q Mr. Thomas, have you prepared this list

1 yourself?

2 A Yes, my bride has.

3 Q Your wife wrote down the various jobs that
4 you had at different times?

5 A No, just where I was located.

6 Q Could I see it for a moment?

7 A Sure. One of those are my diseases and the
8 others is hers, the list of medicines.

9 Q Apparently, according to the list, you were
10 in Newark, Ohio, from 1934 to 1939; is that right?

11 A Yes.

12 Q And then you were in Toledo, Ohio, from 1939
13 to 1949?

14 A Right.

15 Q And then you lived in New York City from
16 1949 to 1959?

17 A Right.

18 Q And from 1959 to 1964 you lived in
19 California?

20 A Right.

21 Q And from 1964 to 1973 you lived in Toledo,

1 Ohio?

2 A Yes.

3 BY MR. SMITH:

4 Q During the period 1939 to 1949 when you were
5 in Toledo, Ohio, what was your job?

6 A I went from the research to Toledo which was
7 headquarters and assistant to the president.

8 I did a number of jobs, but mainly as his
9 assistant.

10 Q President was located in Newark?

11 A No. He was located in Toledo, Ohio.

12 Q I am talking about -- oh, okay. He was
13 located in Toledo, Ohio. I am sorry, my confusion.

14 So the main officers of Owens-Corning
15 Fiberglas Corporation were located in Toledo, Ohio,
16 during the time period from 1939 to 1949?

17 A Right.

18 Q You worked as an assistant to the president
19 of the company during that time?

20 A Right.

21 Q When you were in New York City from 1949 to

1 1959, what was your job?

2 A We had a division called the textile
3 division, and we were developing the textile fiber.

4 Up until that time it had been -- it had all
5 been called the other insulation, which was big
6 volumes of material and handling and textiles which
7 you operated on kind of a per pound basis, so we kind
8 of split them all.

9 General products, which was the insulation
10 end of the business, and textile division, which was
11 manufacturing textiles for insulation, electrical
12 insulation, reinforced plastics, screening, you know,
13 all those things that you did with textiles which was
14 entirely separate in Toledo.

15 BY MR. McGOWAN:

16 Q Did that include insulation products as well
17 as textiles?

18 MR. SMITH: Excuse me. You skipped over a
19 couple of lines.

20 BY MR. SMITH:

21 Q From 1969 to 1964 when you were in

1 California, what was your job?

2 A There was a West Coast division, and I ran
3 it.

4 BY MR. MCGOWAN:

5 Q Did that include insulation products as well
6 as textiles?

7 A It included insulation, right, fiberglass
8 insulation.

9 Q Did you have anything to do with the S and C
10 units?

11 A Not really. They were a separate group,
12 operated out of Toledo.

13 Those were sales and contracts. You took
14 contracts and used fiberglass and other products.

15 Q Did the Santa Clara office have an S and C
16 unit during the 1959 to 1964 time period?

17 A No. They had one in L.A., had one in
18 Seattle and had one --

19 Q San Francisco?

20 A San Francisco, of course. I think those
21 three were the major ones.

1 Q Were they under your supervision?

2 A No.

3 BY MR. SMITH:

4 Q In the 1964 to '73 time period, what was
5 your job?

6 A I went back to Toledo again as assistant to
7 the president. At that time we had a new president,
8 Norstead.

9 Q General Norstead?

10 A Right.

11 Q He is deceased?

12 A Yes. I was there roughly 10 years, a little
13 more than that, and the first part of that I was
14 assistant to the president.

15 Then I was made president and then I was
16 president for four or five years or so, whatever, and
17 then the chief executive operator.

18 BY MR. MCGOWAN:

19 Q When did you first become president of
20 Owens-Corning Fiberglas Corporation?

21 A Early -- let me see my list here. I am not

1 real sure, but I think about 1963, '64, something like
2 that.

3 Q In the mid '60s?

4 A Yes.

5 Q If you remember, just testify to what you
6 remember.

7 A Well, that is what I am trying to remember
8 for sure. Probably '65, '70, in that area.

9 BY MR. SMITH:

10 Q So from approximately 1965 to 1970, you were
11 the president of the company?

12 A Right.

13 Q And then you became the CEO, the chief
14 executive officer?

15 A No, chief operating officer, and the guy who
16 was the president was also the chairman, was the CEO,
17 that was Norstead.

18 Q That was Norstead?

19 A Right.

20 Q So from approximately 1965 to 1970 you were
21 the number one boss at Owens-Corning Fiberglas

1 Corporation?

2 A Well, except there was a CEO who was the top
3 boss, the chief executive.

4 Q You were the president?

5 A Yes.

6 Q And you reported to the CEO who was the
7 number one man?

8 A Right.

9 Q But you were the president of the company?

10 A Right.

11 BY MR. MCGOWAN:

12 Q Mr. Thomas, in the 1940s did you know a man
13 named Ed Ames?

14 A Yes.

15 Q What was his job?

16 A He was kind of the promotional guy and do-
17 gooder and had a number of jobs, and I think he
18 started out having been a schoolteacher, as I
19 remember, still a little schoolteacher-ish, and in a
20 business-like, that you got a lot of people that come
21 in for one reason or another.

1 Q Did he deal with public relations for the
2 company?

3 A Probably partly.

4 Q In the 1940s?

5 A As far as I know.

6 BY MR. SMITH:

7 Q The fiberglass pipe insulation was the
8 insulation that you were selling, correct?

9 A Right.

10 Q And during that period of time you sold that
11 insulation primarily to people who actually worked for
12 the Asbestos Workers union, correct?

13 A Well, our contractors or distributors,
14 warehouses handled it and delivered it.

15 Q The people who used the product in the
16 field, the fiberglass pipecovering, the people who
17 used that product were primarily people who were
18 members of the Asbestos Workers union, correct?

19 A As far as I know, yes.

20 Q And --

21 A Because they were applying insulation.

1 BY MR. MCGOWAN:

2 Q The Asbestos Workers union used two types of
3 products in the 1940s, they used fiberglass
4 pipecovering?

5 A Right.

6 Q And they used asbestos pipecovering,
7 correct?

8 A Right.

9 Q And the fiberglass pipecovering was what you
10 had and were interested in at the time?

11 A Right.

12 Q Now --

13 A And no interest in asbestos.

14 BY MR. SMITH:

15 Q The union in the 1940s, the Asbestos Workers
16 union, was making -- members of the union were from
17 time to time making complaints about something called
18 the itch problem with the fiberglass; is that right?

19 A Sure.

20 Q And that problem could be summarized as
21 saying that when you use the fiberglass pipecovering,

1 fiberglass that gets in the air and gets on your body,
2 apparently caused the workers to itch?

3 A Well, really handling it. It got on their
4 arms, they scratched it and it fought back.

5 Q So --

6 A But it was a problem. They didn't like to
7 handle it.

8 BY MR. MCGOWAN:

9 Q The workers didn't like to handle it and
10 they wanted to have a premium or an extra amount of
11 money paid to them when they would handle the
12 fiberglass pipecovering?

13 A I didn't realize that, but did they? Did
14 they get a premium?

15 Q They asked for it, do you remember?

16 A No, I don't, that it was any factor. They
17 were bitching about the itches and everything else, I
18 guess.

19 BY MR. SMITH:

20 Q Now, to combat the problem that the workers
21 were complaining about the fiberglass pipecovering, do

1 you recall that Owens-Corning tried to point out to
2 these asbestos workers the fact that fiberglass
3 pipecovering would not cause any lung diseases?

4 A Right, and to my knowledge, never did.

5 Q And it was a strong selling point for Owens-
6 Corning that the fiberglass pipecovering didn't cause
7 lung disease and that is what you tried to emphasize?

8 A And its temperature characteristics and
9 other things. High temperature material glass was.

10 Q Was that right?

11 A Glass was high temperature, you know.

12 Q Am I correct that one of your selling points
13 for the fiberglass pipecovering was that it didn't
14 cause lung disease?

15 A Well, going back a little bit, we were very
16 careful to -- any time we changed the fiber size or
17 anything else, to have it checked, tested, and it was
18 never ever proven or ever even further even suspected
19 that you could breathe it, that you couldn't inhale it
20 and didn't, and we had no complaints.

21 Q So in the 1940s, then, as a company, Owens-

1 Corning considered its responsibility to test the
2 fiberglass before they marketed it to determine if
3 there was any health hazard?

4 A We started that early, yes, sure.

5 Q Is that right?

6 A Yes.

7 Q In the 1940s you conducted a number of tests
8 of the products to determine whether or not it would
9 hurt people when they breathed the fiberglass?

10 A They didn't breathe it. They couldn't
11 breathe it. You can't breathe it.

12 Q In any event, you did some tests to
13 determine if there was any harmful effects of the
14 product.

15 A Because we were trying to get rid of the
16 itch. We were making finer fiber and things that
17 didn't stick in you. The reason it itches is because
18 the damn fiber would stick in you.

19 Q But you determined that that was simply a
20 nuisance and it would not really hurt something?

21 A No, we didn't feel it was a danger

1 involved.

2 Q And do you recall any tests that were done
3 at Saranac Lake in New York to determine that the
4 fiberglass -- breathing the fiberglass also would not
5 hurt you?

6 A Breathing fiberglass? You couldn't breathe
7 it. That is what I am saying.

8 Q The small fibers?

9 A No, no fibers got into your lungs. They
10 never made fine enough to breathe, and as far as I
11 know, I have been away a long time, we never had any
12 problem.

13 Q In the 1940s with regard to the fiberglass
14 pipecovering, did Owens-Corning consider it its
15 responsibility to find out about the characteristics
16 of the -- the health characteristics of fiberglass
17 before they put it on the market and started selling
18 it to people?

19 A The fiber that it was made from had all been
20 tested, and as far as we can tell, there was no --
21 nobody caught anything from it.

1 You scratched, but you never came down with
2 pox or anything.

3 Q You did that testing, though, before you
4 sent it out to the public?

5 A We tested every fiber we made.

6 Q That was because you thought ethically as a
7 company that is what you should do before you sold the
8 product, correct?

9 A I don't think we considered ethics. I think
10 we didn't want to offer anything that was a dangerous
11 material and test it.

12 Q After testing them you determined that it
13 was not dangerous and you began selling it?

14 A Right.

15 Q Now, when Owens-Corning developed other
16 products over the years, did you follow that same
17 procedure?

18 Would you test the product first to
19 determine if there was any danger before you would
20 sell it?

21 A I would say in principle, yes. Of course,

1 you have got to realize you are experimenting with
2 thousands of dollars of things.

3 Everything that comes along you test and
4 check it, see whether it is better or worse or
5 whatever.

6 Q But as a company, that was a procedure that
7 you thought was an appropriate procedure for a company
8 to follow?

9 That is, you test something before you sell
10 it?

11 A Yes.

12 Q Now, in the 1940s, am I correct that the
13 asbestos workers that you were selling the fiberglass
14 pipecovering to were also using asbestos-containing
15 pipecovering and block?

16 A I think only as a competitive material.

17 Q So the asbestos pipecovering and block was a
18 competitive product to the fiberglass that you were
19 selling?

20 A Right, a high temperature material. I mean,
21 there is lots of other insulations sold that are made

1 out of reeds and weeds and other things.

2 Q Sure. And the asbestos pipecovering
3 materials at that time included the 85 percent
4 magnesia pipecovering.

5 Do you recall that?

6 A Yep. I don't recall it really because 85
7 percent magnesium. It was a magnesium material, but
8 it never occurred to me or never a matter of question
9 whether there is asbestos in it or not.

10 Q If I tell you that the product had
11 approximately 15 percent asbestos and 85 percent
12 magnesia, would that be approximately what you
13 remember?

14 A I don't have any idea what the composition
15 was. It was a soft product that was competitive with
16 fiberglass and treated as a competitor.

17 Q That was one of the asbestos products that
18 the union used which was not a fiberglass product,
19 right?

20 A Yes.

21 Q But you didn't know how much asbestos was in

1 it?

2 A No. Right.

3 Q Now, did you know that the asbestos workers
4 were also using asbestos cement and other asbestos
5 insulation material besides the pipecovering, or did
6 you just think they used pipecovering?

7 A Right.

8 Q Pipecovering?

9 A Right.

10 Q You knew that the pipecovering was a
11 composition of asbestos and something else, but you
12 didn't know what all of the different compositions
13 were?

14 A Right.

15 Q Do you recall that there was a belief in the
16 1940s at Owens-Corning that the products that they
17 were selling to the asbestos workers had the benefit
18 of not causing any lung damage because you couldn't
19 breathe the fiberglass?

20 A Right.

21 Q My question is, did you know that one of the

1 advantages of your fiberglass pipecovering was that it
2 would not cause lung disease?

3 A I am sure we claimed that. As we claimed
4 anything else we could.

5 Q And that was an advantage that your product
6 had over the asbestos product?

7 A Right.

8 Q Let me show you a memorandum, a letter from
9 the Owens-Corning files dated January 7th, 1942. It
10 is a letter from Ed Ames to Mr. E.J. Marshall with a
11 copy to Mr. Boeschenstein and Mr. Zimmerman.

12 You are not copied on the document, but I
13 wanted to ask you some questions about the document
14 that has been identified by these other people.

15 MR. SMITH: That is the first document in
16 your pack.

17 BY MR. SMITH:

18 Q Who was Mr. Marshall?

19 A Head of the legal company in Toledo, Ohio.
20 Marshall, Melhorne, et al.

21 Q Who was Mr. Boeschenstein at that time?

1 A He was president at the time.

2 Q Who was Mr. Zimmerman?

3 A He was the manufacturing vice-president.

4 Q So he was writing this memorandum, the
5 people to whom this memorandum were addressed were top
6 management people?

7 A Who all got it?

8 Q Marshall, Boeschenstein, and Zimmerman?

9 A Right.

10 Q Is that right, were they top management?

11 A Sure.

12 Q That was written in 1942. In 1943 I have a
13 memorandum that is dated December 27, 1943, addressed
14 to Mr. Gregory.

15 Did you know a Mr. Gregory?

16 A Yes.

17 MR. SMITH: That is the second document.

18 Q Who is he?

19 A Mr. Gregory came as sales manager when the
20 company was formed from Corning.

21 You see. Corning didn't have a very small

1 group of management. They were majoring in research
2 and great at it, so when the company was formed, they
3 got people from Owens-Illinois, Zimmerman, Winkle,
4 Slater and others. And Gregory was the one guy that
5 Corning furnished, sales manager.

6 Q This is another memorandum by Mr. Ames that
7 he has identified in his deposition.

8 A Looks like he did it with his elbow.

9 Q It is a Xerox of an old photocopy.

10 The memorandum -- this memorandum is also
11 copied over on the right-hand side to a number of
12 people. One is Mr. W.P. Zimmerman.

13 A Right.

14 Q We identified him a minute ago. The other
15 is Mr. T.S. Rogers?

16 A Yes.

17 Q Who is he?

18 A He is a technical writer and publicity guy,
19 you know.

20 Q Another is Mr. Johnson. I think it is N.O.
21 or W.O. Johnson.

1 A I am trying to place him.

2 Q And next is Mr. J.H. Thomas.

3 A I know him.

4 Q That is the same person I am talking to,
5 isn't it?

6 A Right, same guy.

7 Q At this point in time, December of 1943, you
8 were an assistant to the president of Owens-Corning at
9 that time?

10 A Yeah, I guess so.

11 Q The next is Mr. William H. Page.

12 A Don't know him.

13 BY MR. McGOWAN:

14 Q Now, in this memorandum, which has been
15 identified by Mr. Ames, it is discussing the
16 advisability of mixing asbestos with fiberglass and
17 making a combination textile.

18 Do you --

19 A Textile?

20 Q Yes. Asbestos and fiberglass were being
21 proposed to be used with a textile.

1 A You know they used to weave asbestos.

2 Q Right.

3 A They ran cotton yarns through it and all
4 kinds of things and those didn't have any strength and
5 they took a lot of doing, but they made mittens that
6 you could pick up a hot plate or hot piece of steel or
7 something.

8 And the whole big thing I remember when I
9 was a kid, the nickelodeon in our town, when the show
10 was over, the curtain came down and said asbestos and
11 that was supposed to save us.

12 Q From a fire?

13 A Fire resistant.

14 Q So if the movie theater caught fire, at
15 least the screen wouldn't burn?

16 A Well, it would keep it behind the screen and
17 wouldn't come out and burn the audience. That's when
18 nickelodeon cost a nickel.

19 BY MR. SMITH:

20 Q Owens-Corning was investigating fiberglass
21 textile from the 1940s?

1 A Right.

2 Q So both the asbestos fiber and the
3 fiberglass fiber would both be used in the 1940s to
4 make textiles?

5 A Right.

6 Q Before I get to this, Owens-Corning was
7 still selling some asbestos yarn in the 1938 to 1952
8 time period?

9 A Not to my knowledge.

10 Q According to sworn answers they have given
11 in court, they were selling asbestos yarn.

12 Did you ever have any --

13 A No.

14 Q -- any responsibility of that?

15 A I didn't have any knowledge of that, no.

16 Q In this memorandum that you are copied with,
17 it says admixtures with asbestos in the middle of the
18 page.

19 A You got it right by your finger.

20 Q It says, in formulating our policy on
21 admixtures with asbestos, we should, the word is

1 interfered with, we should something on the alert
2 because we should be on the alert because otherwise we
3 will run the risk of smearing fiberglass with the
4 hazards of exposure to asbestos?

5 A Never heard of it. Not to say we didn't try
6 putting glass in rayon and glass in rubber and glass
7 in everything.

8 Q In this memorandum, it says in the next
9 paragraph, fabrication of asbestos in both textile and
10 nontextile forms is a dusty process and exposure to
11 asbestos fly involves the danger of asbestosis, a
12 pathological lung condition somewhat like silicosis.

13 This hazard is minimized by the use of hoods
14 and exhaust systems and wearing of respirators.

15 Did you know that?

16 A I don't remember it, no.

17 Q Do you agree that you likely received a copy
18 of this memorandum?

19 A Could well be, yes.

20 BY MR. MCGOWAN:

21 Q Today you don't remember the document?

1 A No.

2 BY MR. SMITH:

3 Q But you agree that it is probable that you
4 received it?

5 A Could well be.

6 Q I am not asking you whether you remember it
7 at all. Excuse me.

8 I am not asking you whether you remember it
9 all, I am asking you having looked at the document,
10 the format of the document, the subject matter of the
11 document and so forth and the date, do you agree that
12 it is more likely than not that you did receive it?

13 A I can agree to that, yes.

14 BY MR. MCGOWAN:

15 Q Now, what independent recollection, if any,
16 do you have as you sit here today of any discussion of
17 asbestosis or the hazards of asbestos that may have
18 come to your attention in the 1940s?

19 A State your question again.

20 Q What recollection, if any, do you have today
21 of any discussion or information about asbestosis that

1 may have come to your attention in the 1940s?

2 A I don't have any. I don't remember anything
3 that came up.

4 Q You don't remember discussing the matter in
5 the 1940s?

6 A No.

7 BY MR. SMITH:

8 Q In this memorandum, Mr. Ames on page 2 talks
9 about the health program of Owens-Corning.

10 It says, our health program has been built
11 on these premises. And he lists five things.

12 A These are the lists.

13 Q Our health program has been built on these
14 five things.

15 Number one, find out the facts. Our files
16 have been centralized, complete related data have been
17 assembled on insurance experience, investigations have
18 been carried out and then he names several people that
19 have been involved.

20 Do you agree that the first tenant of an
21 effective health program would be for the company to

1 find out the facts about the possible hazards of a
2 particular substance?

3 A Right. I would agree.

4 Q The second thing he says, is that the second
5 part of their health program has been built on the
6 premise of getting the facts into the medical
7 literature, and he says articles have been published
8 in industrial medicine, American Journal of Surgery,
9 Journal of the American Medical Association,
10 Industrial Hygiene Digest, et cetera.

11 Do you agree that that is the second thing
12 that he has stated here, that is, to get the facts of
13 the potentially dangerous substances into the medical
14 literature is an important part of an effective health
15 program?

16 A I would think so.

17 Q The third thing he says here as part of an
18 effective health program is to, "Take the mystery out
19 of the subject by making the facts available to
20 members of our own organization and to the general
21 public. (Health aspects has been published and

1 reprints of articles and medical journals made
2 available for general distribution)."

3 Having read that, do you agree that with
4 this third tenant of an effective health program is
5 that you should, that the company, Owens-Corning,
6 should try to take the mystery out of the subject of
7 their products by making facts available to their own
8 employees and to the general public about the
9 characteristics of the products?

10 A Yeah, I would think so.

11 Q Number four is that the fourth part of an
12 effective health program is that the company handle
13 inquiries promptly and fully, all bona fide inquiries
14 have been answered with custom-made reply, forms have
15 been made available.

16 Do you agree an effective program for Owens-
17 Corning including the prompt, handling and full
18 responses to questions that were asked about the
19 potential aspects of their product?

20 A On our product?

21 Q On your products.

1 A Yes, not products we distributed or products
2 we sell for somebody or anything else.

3 Q But on products that you manufactured?

4 A And were planning to manufacture.

5 THE COURT: Counsel, we will take our lunch
6 recess at page 46, line 8. We will resume there at
7 2:30.

8 Members of the jury, we will take our lunch
9 recess. Return to the jury room about 20 after 2, and
10 we will start at 2:30.

11 Have a good lunch.

12 (Whereupon, jury dismissed -- 1:02 p.m.)

13 THE COURT: Everybody be in their seats at
14 2:25, and we will start at 2:30.

15 (Whereupon, a luncheon recess was taken --
16 1:03 p.m.)

17 (Whereupon, afternoon session -- 2:30 p.m.)

18 (Whereupon, in open court.)

19 THE COURT: Are we ready to continue with
20 this exciting issue?

21 MR. WILLIAMS: Your Honor --

1 THE COURT: The reason I say exciting, I
2 heard Mr. Thomas' testimony on at least five
3 occasions.

4 MR. McGOWAN: And that is four times too
5 many.

6 THE COURT: I didn't say that.

7 Go ahead, Mr. Williams.

8 MR. WILLIAMS: I have been apprised that Mr.
9 Grewe's videotape will be played today, and if not
10 today, certainly by tomorrow, and I just wanted to
11 remind you that I have filed written objections.

12 I don't think we came to those, but --

13 THE COURT: I have reviewed what you have
14 submitted, and I think I gave them to the Clerk. And
15 I think I overruled your objection.

16 MR. WILLIAMS: That is what I was
17 anticipating. I just wanted to take that up.

18 THE COURT: All right, sir.

19 MR. WILLIAMS: Thank you.

20 THE COURT: You are welcome.

21 (Whereupon, jury present -- 2:34 p.m.)

1 THE COURT: Please be seated, ladies and
2 gentlemen.

3 Good afternoon.

4 THE JURY: Good afternoon.

5 THE COURT: We took our lunch recess at page
6 46, line 8.

7 Mr. Smith, please.

8 MR. SMITH: Thank you, Your Honor.

9 Continuing with the deposition of John
10 Thomas.

11 READING OF DEPOSITION OF JOHN HENRY THOMAS, II

12 TAKEN ON APRIL 3, 1991

13 (Whereupon, the questions were read by Mr.
14 Smith and Mr. McGowan and the answers were read by Mr.
15 Ignatowski.)

16 (CONTINUED)

17 BY MR. SMITH:

18 Q If you sell it for somebody else, don't you
19 feel like you have to answer questions about the
20 product truthfully?

21 A You expect the product to come with the

1 proper information as to hazards or anything else.

2 Q As a seller, you would expect that from the
3 manufacturer?

4 A Yes.

5 Q And then, the fifth part of an effective
6 health program is that you concentrate on professional
7 and technical influence centers, medical groups,
8 safety engineers, industrial hygienists, physicians,
9 nurses, public health authorities.

10 These contacts have been and are being
11 cultivated, so do you agree that, in order to get out
12 the word about any potential health hazards associated
13 with a product, that an effective health program would
14 include concentration on professional and technical
15 influence centers such as stated here?

16 A I would think so, yeah. Of course, there is
17 always ways of -- if you question it, just don't do
18 it.

19 Q If there is a question about a product being
20 hazardous, the best thing to do is simply not sell it,
21 right?

1 A Either that or get somebody else to handle
2 it for you.

3 Q Now, the first document I have is dated
4 December 6th, 1955.

5 MR. SMITH: That is in your folder.

6 BY MR. SMITH:

7 Q It is to the attention of Mr.
8 Boeschstein.

9 It is on Owens-Corning letterhead and it is
10 from Mr. Rogers that you previously identified.

11 A Yes.

12 Q Apparently, a copy of this document was sent
13 to you according to the cc.

14 A Yes.

15 Q Now, this document concerns a Dr. Schepers,
16 and certain publications that he had written about
17 fiberglass --

18 A Where was he?

19 Q Saranac Lake -- who was promoting these
20 tests and all.

21 Without getting into the substance of the

1 document, looking at the document, do you agree that
 2 you likely -- that it is likely that you received a
 3 copy of this document on or about the time it was
 4 written in 1955 in the course of your employment at
 5 Owens-Corning?

6 A Probably.

7 BY MR. McGOWAN:

8 Q The next document?

9 A Incidentally, what does it say?

10 Q It talks about Dr. Schepers in his research
 11 at Saranac.

12 A You read it.

13 THE COURT: Who is asking questions?

14 MR. McGOWAN: The witness is asking
 15 questions.

16 MR. IGNATOWSKI: It just said you read it or
 17 you read it, either way.

18 MR. SMITH: Next page, page 50.

19 BY MR. SMITH:

20 Q Now, the second document is a document dated
 21 August 20, 1956.

1 It purports to be from a Mr. Burch?

2 A Yep.

3 Q It is an intracompany correspondence on
4 Owens-Corning letterhead and it has your name on it as
5 receiving a copy?

6 A Yes.

7 Q Now, looking at the document, you agree
8 that, based upon the document, that you are likely to
9 have received a copy of it in the course of your
10 employment at Owens-Corning; it is probable that you
11 did?

12 A Yeah, but I don't know why, except they have
13 sent it to the president and the heads of all of the
14 divisions and then the head of the research.

15 Kessler, who was in California and Boyd,
16 who was Toledo. And, you know, they gave it pretty
17 broad coverage.

18 It says, attached is a copy of this letter
19 which we would feel -- which we feel would be most
20 helpful if we were faced with a lawsuit in which the
21 original reporter --

1 Q Do you think it is likely you received it?

2 A I think so.

3 MR. SMITH: Mr. McGowan.

4 MR. McGOWAN: Yes.

5 BY MR. McGOWAN:

6 Q Mr. Thomas, attached to this memorandum was
7 a letter from Dr. Schepers.

8 Did you ever meet with Dr. Schepers?

9 A Wasn't Seifert; wasn't the guy that worked
10 for fiberglass, was it?

11 Q No, this man's name was Dr. Gerrit Schepers
12 and he was from South Africa. And he was head of the
13 Saranac Research Institute in New York.

14 Do you remember him?

15 A I don't remember him.

16 Q Did your job duties ever involve
17 coordination of health research projects?

18 A Not as such. Only might have come along
19 with something else I was doing.

20 Q Did you ever have any direct contact with
21 Saranac Lake?

1 A No.

2 Q Do you know what Saranac Lake is?

3 A It is a testing laboratory, as I remember,
4 what I know of it.

5 Did we use it a lot? It is used a lot by
6 asbestos workers in trying to prove something.

7 Q In the 1950s and '40s, were you aware of
8 animal studies being done at Saranac Lake?

9 A Not that I remember.

10 Q Did you ever receive or did anyone ever
11 provide you with information about animal studies on
12 the Kaylo product?

13 A No.

14 Q Throughout the whole time that you were
15 employed by Owens-Corning Fiberglas Corporation, did
16 anyone ever show you the animal studies that had been
17 done at Saranac with the animals who were exposed to
18 breathing Kaylo dust?

19 A No, I don't remember that.

20 Q Throughout the entire time that you worked
21 for Owens-Corning Fiberglas, did you ever ask whether

1 or not any animal studies had ever been done with the
2 Kaylo product?

3 A Not to my knowledge. I don't remember any
4 requests.

5 BY MR. SMITH:

6 Q Well, let me show you a letter dated
7 November 16, 1948 to a Mr. Bowes from Dr. Vorwald at
8 the Saranac Laboratory.

9 And I understand that you have not seen
10 this, but this letter recites the fact that the
11 experimental study of the effects of inhaled Kaylo
12 dust on normal, uninfected animals is now finished and
13 the conclusions expressed on that subject are final,
14 rather than tentative.

15 It then says, in all animals sacrificed
16 after more than 30 months of exposure to Kaylo dust,
17 unmistakable evidence of asbestosis has developed
18 showing that Kaylo on inhalation is capable of
19 producing asbestosis and must be regarded as a
20 potentially hazardous material.

21 Now, was that information that I just read

1 to you ever brought to your attention at any time when
2 you were at Owens-Corning, either when you were an
3 assistant to the president or when you were president
4 of the company?

5 A I don't remember it. I knew Bowes pretty
6 well, and I don't know how asbestos got by him
7 actually.

8 Q Another paragraph as to this letter in 1948
9 says, "I realize that our findings regarding Kaylo are
10 less favorable than anticipated.

11 "However, since Kaylo is capable of
12 producing asbestosis, it is better to discover it now
13 in animals rather than later in industrial workers.

14 "Thus the company being forewarned will be
15 in a better position to institute adequate control
16 measures for safeguarding exposed employees and
17 protecting its own interests."

18 If you had known that information, Mr.
19 Thomas, would that have affected in any way whether or
20 not Owens-Corning would have sold the Kaylo product?

21 A I don't know. I think we would want more

1 information.

2 Q If you had known that the animals could get
3 asbestosis from breathing Kaylo, would you believe,
4 based upon that, that Owens-Corning, if they had known
5 it, should have put some sort of label or safety
6 instructions on the product?

7 A Should have run up a red flag, I would
8 think.

9 Q And if it had been known to you, then it
10 would have run up a red flag to you?

11 A Right.

12 Q What would you have recommended, if it had
13 been known to you, that be done about telling the
14 consuming public about this information if it was
15 known to you?

16 A Put a warning on, put a warning or something
17 and find a substitute.

18 Q How did you know Mr. Bowes? Who was the
19 person to whom this letter was written?

20 A He was in research at Owens-Illinois.

21 Q Did you have contact with him in the 1940s?

1 A When I moved to Toledo from Newark, we met
2 the Boweses and were friends with them.

3 Q You and your wife were friends with Mr.
4 Bowes and his wife?

5 A Right.

6 Q How long did you remain friends?

7 A Until he died.

8 Q When was that?

9 A Until she died, and she died last year or
10 so. He died quite a while ago.

11 Q Were you friends throughout the 1950s,
12 '60s?

13 A Well, when we went to New York, of course,
14 we didn't see them then.

15 Q That was in the period 1949 to '59?

16 A Yeah, and then we moved back to Toledo
17 finally and he was gone, I guess, by then. She just
18 died recently.

19 Q But at the time this letter was written to
20 Mr. Bowes in 1948, you knew him then?

21 A Yes.

1 Q Socially?

2 A Yes, sure.

3 Q You didn't work in the same building, did
4 you?

5 A No, no, but we always had a reasonably close
6 relation with Owens-Illinois because our people came
7 from there and they were friends.

8 Q Did the Owens-Illinois Company continue to
9 exchange information and share information with Owens-
10 Corning throughout the 1950s?

11 A Yes.

12 Q And if things were important to joint
13 ventures that they were involved with, Owens-Illinois
14 would share information with Owens-Corning?

15 A Yeah, well, I would say so, yes, sure.

16 Q In the 1950s, from 1953 to '58, Owens-
17 Illinois and Owens-Corning were working together with
18 regard to Kaylo and Owens-Illinois was manufacturing
19 it and Owens-Corning was selling it?

20 A Yeah, and were going to manufacture it.

21 Q During that period of time, do you know

1 whether or not the Owens-Illinois people worked
2 closely with the Owens-Corning people to advise them
3 about the Kaylo product?

4 A I am sure they did.

5 Q Let me show you a document from the Owens-
6 Corning depository dated February 7, 1952 which
7 concerns those same animal studies.

8 A This guy is in Saranac?

9 Q Yes, Dr. Vorwald. This has Bates number
10 015011347. And this says, "Herewith is the final
11 report of our studies concerning the capacity of
12 inhaled Kaylo dust to injure the lung."

13 The second paragraph says, "The results of
14 the investigations with animals show that Kaylo is
15 capable of producing peribronchiolar fibrosis typical
16 of asbestosis."

17 Now, am I correct that no one ever shared
18 this letter with you?

19 A I don't remember it, no. I don't remember
20 seeing it.

21 Q Do you agree that if you had seen this

1 letter, that this, again, would have been a red flag
2 to you?

3 A I think anyplace along the line, although I
4 wasn't mixed up in all of this, asbestos kind of had a
5 bad name as far as I was concerned.

6 I think mainly because the early asbestos
7 products that were on the market were soft and fuzzy
8 and floated around.

9 Q They created a lot of dust?

10 A Well, some certainly.

11 MR. IGNATOWSKI: Is there a question in
12 between there, Mr. Smith?

13 MR. SMITH: No, keep reading.

14 MR. IGNATOWSKI: On page 60?

15 MR. SMITH: Yes, please.

16 A As far as I can remember, we were -- when I
17 came back to Toledo, we were busy getting asbestos the
18 hell out of the product.

19 Q But in the 1940s, is that when you formed
20 your opinion, asbestos was a bad product?

21 A Well, I wouldn't say a bad product. I would

1 say it was questionable how you used it. It was a
2 good product as far as heat was concerned.

3 Q But it was a product that you knew could
4 create a lot of dust and could possibly cause people
5 to get sick?

6 A Right, sure.

7 BY MR. MCGOWAN:

8 Q And did you continue to have that belief
9 throughout the 1950s?

10 A Well, now, '50s, where was I?

11 Q You were in New York.

12 A Yeah, I had no occasion to. I don't think
13 fundamental feelings changed one bit, but I had no
14 information that showed one way or another what
15 happened. But people inhaled it and it never occurred
16 to me that they would go into the use of Kaylo without
17 proper tests.

18 Q So does it frankly -- is it disappointing to
19 you, Mr. Thomas, here we are in 1991 and for the first
20 time in 1991 you are learning about this animal study
21 that was done in the '40s on Kaylo and no one ever

1 told you about it before?

2 A Not this specific one. Of course, there was
3 a lot of commotion.

4 I remember when I came back from the West
5 Coast there was a lot of commotion and should have
6 been, because there was asbestos fiber floating around
7 in the plant. And, see, we went busily about getting
8 rid of it and finally did.

9 Q When you got back from the West Coast -- my
10 question to you is, Mr. Thomas, aren't you just a
11 little bit angry or annoyed you are finding out about
12 these Kaylo studies for the first time in 1991 and
13 that no one told you about this?

14 A No, I don't think so. I think this is a
15 matter of a lot of things that were going on, and I
16 didn't have any close contact with and no occasion to
17 know about them.

18 BY MR. SMITH:

19 Q If you had been present in 1952 and/or
20 received this report, this would have been a red flag
21 to you, wouldn't it?

1 A It would have probably been what I expected
2 if I knew tests were being made.

3 Q And you would have expected this because, by
4 that time, you already knew that asbestos was
5 something that could cause people to get sick?

6 A That you could inhale it.

7 Q And that it could cause this lung disease?

8 A Asbestosis, right.

9 BY MR. MCGOWAN:

10 Q Even though you didn't get a copy of this
11 report in 1952 --

12 A Who did that go to?

13 Q This went to Owens-Illinois Glass Company.

14 A Who?

15 Q Bill Hazard.

16 A Okay.

17 Q Did you know him?

18 A Yes.

19 Q Who was he?

20 A This was his job, was looking for hazards.

21 Q Good name for a man named Hazard.

1 A Right.

2 Q His job was to determine whether or not
3 there were hazards with products?

4 A And where we were if there were any.

5 BY MR. SMITH:

6 Q Am I correct, that even though you didn't
7 get this report, the fact that animals could get
8 asbestosis from breathing Kaylo is not something that
9 would have surprised you in that time period?

10 A No, I would not have been surprised.

11 Q Because you already knew?

12 A At that time.

13 Q At that time, that information?

14 A Yes.

15 Q Mr. Thomas, I am going to show you another
16 document. This is dated May 23, 1957 from a Mr.
17 Johnson to a Mr. Burch from K.S. Johnson in Santa
18 Clara.

19 Do you know a Mr. Johnson?

20 A Yep, I did.

21 Q What was his job?

1 A He was a personnel guy.

2 Q Personnel?

3 A Manager, Santa Clara.

4 Q And the subject of the memorandum is
5 asbestosis and it is directed to Mr. Burch.

6 Who was Mr. Burch at that time?

7 A He was the company's personnel manager.

8 Q And this memorandum -- at the end of the
9 memorandum he says I am sure that everyone in our
10 company is conscious of the interest of the asbestos
11 workers and the problems of asbestosis and allied
12 diseases.

13 However, we feel it important to keep them
14 informed of any developments here in the West.

15 A Okay. Yeah, what about them?

16 BY MR. MCGOWAN:

17 Q My question to you is, based on what you
18 have told me this morning, you agree with Mr. Johnson
19 that everyone in the company was aware of the problems
20 that asbestos workers were having with the disease
21 asbestosis?

1 A I don't think -- I think he is just painting
2 with a broad brush and has no position to do so.

3 He was manager of personnel affairs in a
4 little plant in Santa Clara, and these products were
5 coming from the West Coast or to the West Coast from
6 the East someplace where they were manufactured.

7 Through our contracting company he
8 undoubtedly knew about then and I think he is just
9 painting with a broad brush that everybody ought to
10 know about this. Kind of a little out of his field.

11 BY MR. SMITH:

12 Q As of that time, based on what you had
13 learned in the '40s, you knew that there was a problem
14 or that the asbestos workers were interested in the
15 problem of asbestosis?

16 A Sure.

17 Q And by this time, 1957, you knew that the
18 reason these people were interested in the hazards of
19 asbestosis was because that was one of the risks of
20 working with asbestos products?

21 A Right.

1 Q And those products included the asbestos
2 insulation products which were in competition with the
3 fiberglass products of Owens-Corning?

4 A Right.

5 BY MR. MCGOWAN:

6 Q And at this point in time?

7 A I don't think they were competing head to
8 head.

9 Q Different temperature ranges?

10 A Right.

11 BY MR. SMITH:

12 Q At this point in time one of those asbestos-
13 containing insulation products was the Kaylo product,
14 correct?

15 A As far as I know, yes.

16 Q And Owens-Corning had been selling that
17 product as a distributor for Owens-Illinois since
18 1953?

19 A Yep.

20 BY MR. MCGOWAN:

21 Q Now, had you known since the '40s that these

1 same insulators, one of the risks of their trade was a
2 disease of asbestosis?

3 A Of course. They had no substitute. They
4 had to have something to insulate high temperature
5 pipes.

6 BY MR. SMITH:

7 Q You agreed with that, but my question was,
8 do you agree that you had known since the 1940s that
9 the asbestos workers who were using the asbestos
10 pipecovering materials were at risk of getting
11 asbestosis?

12 A No, you mean what would I have done about
13 it?

14 Q Not what you would have done. You had known
15 that that risk existed?

16 A Yeah, I think so.

17 Q And that was one that you knew during the
18 time that you were an assistant to the president of
19 Owens-Corning when you were at Toledo, correct?

20 A Right.

21 Q And that knowledge then, is consistent with

1 what Mr. Johnson is saying in 1957, that he knew at
2 that time, he was conscious at that time of the
3 interests in the asbestos workers, the people that use
4 asbestos products and the problems of asbestosis?

5 A Right.

6 Q Let me show you another document dated
7 February 6th, 1956. It is from Dr. Schepers to Mr.
8 Burch, that you had previously identified.

9 But in this letter from Dr. Schepers of
10 Saranac Lake, Dr. Schepers says, on the fourth page of
11 this letter to Mr. Burch, I suppose you already know
12 that asbestos is fairly well incriminated as a
13 carcinogen and that asbestos causes lung damage by
14 virtue of the length of its fibers.

15 Do you see that?

16 A Yes, I see it.

17 Q Now --

18 A I didn't know it had anything to do with the
19 length of the fiber or size of the dust or any of
20 those things.

21 I just thought the fact that you could

1 breathe it caused you to get in trouble.

2 Q So in that 1956 time period you knew that if
3 you inhaled asbestos-containing dust or dust that
4 contained asbestos, you could get in trouble,
5 correct? You could get sick.

6 But my question is, did you know that one of
7 the sicknesses or the possible sicknesses was cancer?

8 A No. It is -- I thought it took your lungs
9 out of circulation, parts of your lungs.

10 Q What was it that you understood that this
11 asbestosis was that the people that used asbestos
12 products could get?

13 What was this disease?

14 A If you breathe it, it went into the lungs
15 and took part of the lungs out of circulation.

16 Q It would cause the lungs to get scarred and
17 not be able to function correctly?

18 A Right, but you could live with it, as many
19 people are, I guess.

20 Aren't they?

21 Q Yes. You knew that one of the problems

1 associated with it was difficulty in breathing?

2 A Right.

3 Q Would it be consistent with your
4 understanding in 1955 that asbestosis was a risk, a
5 health risk to persons who used asbestos products, but
6 that, on the other hand, people that used fiberglass
7 products did not have any risk of contracting lung
8 disease?

9 A In my opinion, it is.

10 Q In your opinion it is?

11 A Yes.

12 Q My question to you is, with regard to this
13 disease asbestosis, did you know in the 1940s that one
14 of the ways to prevent this disease was to wear a
15 respirator?

16 A Sure.

17 Q In the 1940s and 1950s, did you know that
18 one of the ways to prevent getting the disease
19 asbestosis was to wear a respirator?

20 A Well, I knew what a respirator was for.

21 Q And you knew that if respirators were worn,

1 it would be a way to prevent people from getting
2 asbestosis?

3 A And other things, too. Now your dentist
4 wears one.

5 Q Specifically people who used asbestos-
6 containing products, pipecoverers, asbestos workers in
7 the 1940s and 1950s, you knew that if those people
8 wore a respirator, it would help to prevent the
9 disease of asbestosis?

10 You knew that, didn't you?

11 A Yes.

12 Q And do you agree that if a worker was
13 working with asbestos-containing products in the 1940s
14 and 1950s as a pipecoverer, that part of the necessary
15 education of that worker would include advising him
16 that he should wear a respirator to prevent the
17 disease of asbestosis?

18 A Yes. Now, let me ask the question, do they
19 today?

20 BY MR. MCGOWAN:

21 Q Do they today?

1 A Do they?

2 Q Yes.

3 BY MR. SMITH:

4 Q Now, throughout the time that you worked for
5 Owens-Corning, did you ever hear of something called a
6 threshold limit value?

7 A Not really, I don't think. I don't know
8 what the hell it means.

9 Q Okay. So would I be correct then, that when
10 you were president of the company, no one ever brought
11 to your attention anything of any importance about the
12 threshold limit value as it might apply to Kaylo or
13 any asbestos products?

14 A When I got to be president, we were trying
15 to get that asbestos the hell out of Kaylo just as
16 fast, by God, as we could. It took longer than we
17 hoped, but they finally got it out.

18 Q But did anybody ever suggest to you that a
19 threshold limit value was important as pertains to
20 Kaylo?

21 A It wasn't a criteria in any sense that I

1 remember. What does it mean? That you get them over
2 and above that you got problems and below that you get
3 by without any trouble?

4 MR. IGNATOWSKI: Line 17.

5 BY MR. MCGOWAN:

6 Q Are you aware of any discussion about the
7 subject at all?

8 A Never heard of it. Now, these outside
9 tests, weren't they done with that in mind, Saranac
10 and all of these?

11 Wasn't that determining what was dangerous
12 and what wasn't?

13 Q Saranac dealt with animals?

14 A Yes.

15 BY MR. SMITH:

16 Q Are you aware of any other tests ever
17 performed on the Kaylo product?

18 A Not to my knowledge.

19 Q Have you ever heard of anything called a
20 Fleischer-Drinker report?

21 A No.

1 MR. McGOWAN: Skip 82, skip 83. Skip my
2 designations on 84.

3 MR. SMITH: Line 9 on page 84 then.

4 BY MR. SMITH:

5 Q Is it about this time period 1964 that you
6 learned about Dr. Selikoff's study of cancer and
7 asbestos workers?

8 A I didn't pay too much attention to it, I
9 remember that.

10 I just felt that we were in a dangerous area
11 and should get the asbestos the hell out of the
12 product.

13 Q Am I correct that, even prior to receiving
14 this memorandum in May, 1964, you had already decided
15 that the Kaylo product was dangerous because it had
16 asbestos in it and you ought to get the asbestos out
17 of it?

18 A Right.

19 Q Now, do you recall discussions in the 1960s
20 that related to Dr. Selikoff and his findings of
21 cancer in asbestos workers?

1 A Yeah, but I don't remember any detail. I
2 mean, it was covered.

3 Q Do you agree that you probably did receive a
4 copy of this report, but you simply don't recall it at
5 this time?

6 A Right.

7 MR. McGOWAN: Page 86, line 8.

8 BY MR. McGOWAN:

9 Q Mr. Thomas, do you feel all right?

10 A Fine.

11 Q Do you feel strong?

12 A Good.

13 Q We have taken a short break and marked some
14 documents.

15 A Things wouldn't be so difficult if you could
16 shut people up, would it?

17 Q Mr. Thomas, did you have any input directly,
18 yourself on what information, if any, should be put on
19 the labeling --

20 A No.

21 Q -- of the Kaylo product?

1 A Never knew they were planning on a label or
2 that they were putting one out.

3 Didn't know anything about labeling anyway,
4 except I have a hell of a time reading the caution,
5 because they got the print so goddamn fine that you
6 can't read them.

7 Q What are you talking about?

8 A My medicine mostly.

9 BY MR. SMITH:

10 Q Do you agree that if a label is in small
11 print that it is likely it is not going to be read?

12 A I would think that is a fair question.

13 Q You agree that that is a fair statement,
14 don't you?

15 A I think so, yeah.

16 Q And in order for a label to be effective, it
17 has got to be easy or conspicuously obvious to
18 somebody who is going to be using the product; do you
19 agree?

20 A It ought to grab you.

21 Q It ought to grab you?

1 A Right.

2 Q And it ought to be easy to understand,
3 right?

4 A Yes.

5 Q And it ought to convey any danger that may
6 be associated with the product, correct?

7 A As far as I am concerned.

8 Q Do you agree that the Kaylo product, in
9 order for the label to be effective, it should be in a
10 large enough place so people could see it obviously?

11 A In fact, I don't know if I have ever seen
12 one.

13 Q In order to be effective, you agree it would
14 have to be conspicuous?

15 A It would be prominent.

16 Q Do you agree that, like other labels, it
17 ought to be the kind of label that grabs you?

18 A Right.

19 Q And it ought to be a label that is easily
20 understood, correct?

21 A Yep.

1 Q It ought to be a label that, if there was
2 danger in the Kaylo product, it advises people that
3 there was a danger; do you agree?

4 A Right.

5 Q And you agree that if there were safety
6 precautions to avoid the danger, that those safety
7 precautions could be clear and understandable; do you
8 agree?

9 A Yep.

10 MR. IGNATOWSKI: Line 25, at the bottom of
11 9.

12 BY MR. MCGOWAN:

13 Q You would pay attention to it?

14 A I think that is right, but I don't know
15 anything about it, so I can speak freely.

16 If you had a group of people that were
17 trying to design a label, you would have 10 opinions
18 and you make the label, and you would have 10
19 different labels, none of which would be even noticed
20 by the others.

21 BY MR. SMITH:

1 Q With regard to the Kaylo product, by the mid
2 1950s you had come to the conclusion that because it
3 had asbestos in it, it was a dangerous product,
4 correct?

5 A Right.

6 MR. McGOWAN: The question is read back.

7 MR. IGNATOWSKI: Which page?

8 MR. McGOWAN: Page 90.

9 MR. IGNATOWSKI: Okay.

10 MR. McGOWAN: The question was read back.

11 BY MR. McGOWAN:

12 Q This is in the 1950s?

13 A Yeah, that was early.

14 Q You agree with that?

15 A No. I don't think we were aware of it
16 really.

17 MR. IGNATOWSKI: I think you are on page 92,
18 line 3.

19 MR. McGOWAN: All right.

20 BY MR. McGOWAN:

21 Q We are talking about Kaylo, Mr. Thomas, in

1 all honesty.

2 A No, well, I just think we were talking
3 generally.

4 BY MR. SMITH:

5 Q Kaylo was one of those asbestos-containing
6 products, correct?

7 A Right.

8 Q You and I were talking about asbestos-
9 containing products including Kaylo, correct?

10 A Generally.

11 Q Yes.

12 A All of them.

13 Q All of them were potentially dangerous?

14 A Yes.

15 MR. SMITH: Page 94.

16 BY MR. SMITH:

17 Q Mr. Thomas, you agree that a warning on the
18 product Kaylo, in order to be effective, should, in
19 the minimum, indicate that it was potentially
20 dangerous?

21 A Right.

1 BY MR. MCGOWAN:

2 Q If you put danger or warning on a box of
3 Kaylo, you agree that one of the results of that would
4 have been you would have sold less Kaylo?

5 A We had people who were label people. They
6 all took a good look at this and decided what they
7 could come up with.

8 BY MR. SMITH:

9 Q If Owens-Corning had had the word danger on
10 its Kaylo products and had other asbestos
11 manufacturers not had that on their products, you
12 agree, that would have put Owens-Corning on a
13 competitive disadvantage?

14 A You would have a little harder selling job.

15 Q Let me show you a document dated October 27,
16 1966 that, at the top, has, in handwriting, copies to
17 J.H. Thomas.

18 Do you see that?

19 A Yes.

20 Q It says copies to J.H. Thomas.

21 A Who wrote that?

1 Q I am not sure whose handwriting it is in.

2 A Who wrote it, Wayne Johnson?

3 Q This document is 010360813 and 0814.

4 It says, "Owens-Corning Fiberglas cannot
5 dissociate itself from asbestos, as we buy merely \$1
6 million worth as reinforcement for Kaylo."

7 Do you remember receiving this document in
8 the ordinary course of your employment at Owens-
9 Corning?

10 A No, I don't.

11 Q Looking at the document, the structure of
12 the document, the people to whom it is addressed and
13 so forth, do you think it is likely that you did
14 receive a copy of it?

15 A Probably, yeah.

16 Q This document says, "Surveys of union locals
17 in Cincinnati, New York and New Jersey reveal a
18 substantially higher incidence of cancer than the
19 general population, and no reason has been brought
20 forward except exposure to asbestos.

21 A Okay, I think I may have seen it.

1 Q Next document is number 13 and purports to
2 be addressed to you from Mr. Hardwick and it is dated
3 November 1, 1966, okay?

4 A I think I have seen it.

5 Q Do you think that you likely or probably
6 received a copy of this document in the ordinary
7 course of your employment in Owens-Corning?

8 A Yes, I think so.

9 MR. IGNATOWSKI: Page 105, line 5, Mr.
10 McGowan.

11 BY MR. MCGOWAN:

12 Q What was the date of retirement from Owens-
13 Corning?

14 A I guess I retired on my 65th birthday,
15 theoretically, January 1st.

16 Q That was 1973?

17 A '73, right.

18 Q Did you own stock in the company at that
19 time?

20 A Yes.

21 Q And you have continued to own stock in the

1 company?

2 A I have, yes.

3 BY MR. SMITH:

4 Q Can you tell me approximately what the stock
5 position is that you have with the company,
6 approximately how many shares you own?

7 A Mostly, when they reorganized, the stock
8 went way up and I got rid of most of it.

9 Q How much did you have at that time?

10 A I don't know exactly, but a few thousand
11 shares.

12 Q How many do you have now?

13 A A few thousand.

14 BY MR. MCGOWAN:

15 Q What does a few mean?

16 A Okay, when the company was reorganized there
17 was a guy named Selikoff who was trying to buy the
18 company, kept running the price of stock up.

19 When it got up to around 100 a share and it
20 was pretty tempting, I got rid of that and put it in
21 the bond.

1 Q His name was Selikoff?

2 A Something like that.

3 MR. MCGOWAN: That was by his wife, Mrs.

4 Thomas.

5 MR. IGNATOWSKI: No, the witness, something

6 like that, at line 8.

7 MR. MCGOWAN: Mrs. Thomas.

8 A It was a bad name. I forget what it was.

9 MR. IGNATOWSKI: Do you want me to read
10 line 7 -- no, that wasn't it -- by Mrs. Thomas?

11 MR. MCGOWAN: No, that is fine.

12 THE COURT: When was she sworn as a
13 witness?

14 MR. MCGOWAN: She wasn't.

15 BY MR. SMITH:

16 Q Approximately, what is it that you own now,
17 75, 80,000?

18 A Oh, no, less than that.

19 Q 5,000?

20 A Maybe around 40, 50.

21 Q Forty or 50,000 shares?

1 A Yes.

2 Q Of Owens-Corning?

3 A Right.

4 Q What is that stock selling at today?

5 A This morning?

6 Q This morning. I am sure you have a quote.

7 A What was it, Doris?

8 THE COURT: Go to line 19, the answer.

9 A Twenty-four and three-eighths.

10 THE COURT: That was the question.

11 Q Twenty-four and three-eighths.

12 A Yes, I could have told you that before
13 lunch.

14 BY MR. MCGOWAN:

15 Q In the 1930s when you were with Owens-
16 Illinois and then with Owens-Corning, you were doing
17 research of fiberglass; isn't that right?

18 A Right.

19 Q You didn't do any specific research on
20 asbestos during that time period, did you?

21 A No.

1 Q You didn't work with any asbestos-containing
2 products at that time either, did you?

3 A Not really, no. Maybe a heating pad that we
4 could put a hot burner on.

5 Q You didn't do any research on those products
6 though?

7 A No.

8 Q And then, in the 1940s when you were in --
9 let's see, '39 to '49 when you were in Toledo?

10 A We didn't have any. I don't know what you
11 want to ask.

12 Q You didn't do any specific research at that
13 time on asbestos, did you?

14 A No.

15 Q You didn't do any research on asbestos-
16 containing products?

17 A Right.

18 Q You didn't work with asbestos-containing
19 products at that time?

20 A Not really, no.

21 Q So you didn't have any opinion at that

1 .time --

2 MR. McGOWAN: We will skip that.

3 Q My question was, you didn't have any reason
4 to form any opinions regarding asbestos-containing
5 products during that time period?

6 A No.

7 Q In the 1950s you were in New York working
8 with the textile group?

9 A Right.

10 Q Did you do any research at that time on
11 asbestos?

12 A None at all. Never got involved with it.

13 Q You didn't do any research on asbestos-
14 containing products at that time?

15 A No.

16 Q Did you work with asbestos-containing
17 products at that time?

18 A No.

19 Q When did you first learn that Kaylo
20 contained asbestos?

21 A Never had anything really to do with

1 asbestos and Kaylo.

2 Kaylo -- fiberglass took on Kaylo after I
3 had gone to New York and it never got to be a
4 question. And I assume it was a product they added to
5 their industrial line which I wasn't concerned of or
6 part of and really wasn't conscious of what the hell
7 was going on.

8 Q So your first involvement with Kaylo wasn't
9 until 1964, was it, when you came back to Toledo?

10 A That was when I really got concerned about
11 it.

12 Q When did you first learn that Kaylo
13 contained asbestos?

14 A I haven't any idea.

15 BY MR. SMITH:

16 Q When was your first involvement with Kaylo,
17 Mr. Thomas?

18 A When I came back in 1964, and it was obvious
19 that it was a hazard.

20 Q In 1964?

21 A In the early '60s.

1 BY MR. MCGOWAN:

2 Q Mr. Thomas, are opinions that you testified
3 to regarding asbestos in the 1940s and 1950s, were
4 they based upon any knowledge, specific knowledge that
5 you had about Kaylo?

6 A No.

7 Q So were they based on just general knowledge
8 of asbestos as a fiber?

9 A Right.

10 BY MR. SMITH:

11 Q Mr. Thomas, when you came back to Toledo in
12 the '60s, I understand you became involved in the
13 Kaylo replacement program?

14 A Yes, right.

15 Q What was your role in that program?

16 A I was the number 2 guy in the business, and
17 I was shocked by the fact that there was asbestos
18 fiber being blown around and --

19 BY MR. MCGOWAN:

20 Q Do you understand what I mean by the
21 asbestos replacement program?

1 A Yes.

2 Q What is your understanding of that?

3 A Find something to put in there instead of
4 asbestos.

5 Q To replace asbestos?

6 A Right, anything that we could, cotton or
7 wool or --

8 Q What was your role in that program?

9 A I was the boss.

10 Q Were you aware of any decisions by the
11 company to delay that program?

12 A Not the main program, no. There may have
13 been guys along the line in sales or some other area
14 that would have it go slower, faster or something.

15 Q Well, what was your opinion with regard to
16 how fast this program should go?

17 A As fast as it could go.

18 Q In your opinion, did it go as fast as it
19 could go?

20 A It was immediate. Progress was immediate.

21 BY MR. SMITH:

1 Q Mr. Thomas, you testified that you weren't
2 involved in the warning process or developing the
3 warning label for Kaylo; is that right?

4 A No. In fact, I never seen one.

5 BY MR. McGOWAN:

6 Q You were not in marketing with OCF at the
7 time; I am talking about the late '50s, mid '60s?

8 A No.

9 Q Do you consider yourself an expert in
10 drafting warnings?

11 A No.

12 Q Were you involved in the discussions
13 regarding whether to put a warning on Kaylo?

14 A Not specifically. I mean, I wasn't
15 responsible for it, but I think fiberglass felt they
16 needed a warning in relation to the other things that
17 were happening, going on at the time.

18 BY MR. SMITH:

19 Q To your knowledge, did they put a warning on
20 it?

21 A Just by -- I haven't seen it.

1 BY MR. MCGOWAN:

2 Q But you weren't involved in that process?

3 A No.

4 Q Going back to the 1950s, you testified you
5 were in New York with the textile group.

6 A Yes.

7 Q So you were not in Toledo when OCF was
8 distributing Kaylo in the 1950s?

9 A No, I wasn't.

10 Q And you weren't in Toledo when OCF bought
11 the Berlin plant in 1958?

12 A No.

13 Q You weren't involved in those negotiations?

14 A No.

15 Q Were you involved in any discussions with
16 Owens-Illinois regarding the Kaylo product at that
17 time?

18 A No.

19 Q So you don't have any specific knowledge
20 regarding the negotiations between OCF and O-I?

21 A No.

1 Q Do you have any specific knowledge of what
2 was shared between OCF and O-I during that period of
3 time?

4 A No.

5 Q As you know, I represent Owens-Illinois.

6 MR. IGNATOWSKI: What page are you on?

7 MR. McGOWAN: 121. Let's skip to line 17.

8 BY MR. McGOWAN:

9 Q Did you do any asbestos research --

10 MR. McGOWAN: Excuse me. Line 12, Mr.
11 Ignatowski.

12 BY MR. McGOWAN:

13 Q Am I correct, from having heard your prior
14 testimony, that you did not have any involvement
15 whatsoever with asbestos or asbestos-containing
16 products while you were employed by Owens-Illinois?

17 A Right.

18 Q Nor did you have any research or have any
19 involvement with asbestos-containing products while
20 you were with Owens-Corning from 1939 to 1940 in
21 Toledo?

1 A Right.

2 Q And then you went to New York to work for
3 the textile division?

4 A The textile division.

5 Q That was between 1949 and '59?

6 A Right.

7 Q And in that capacity you also had no
8 involvement with asbestos and asbestos-containing
9 products?

10 A Right.

11 Q And then you went to California in 1959 and
12 remained there until 1964?

13 A Right.

14 MR. McGOWAN: Bottom of the page.

15 BY MR. McGOWAN:

16 Q Am I correct that any opinions you have with
17 regard to the Kaylo product were formed after 1964
18 when you returned to Toledo?

19 A Well, I knew it was -- as a product, I knew
20 what it was as a product, and I knew we were selling
21 it to our distributors/applicators, but I had no

1 physical information about the product or anything
2 else.

3 Q Mr. Thomas, am I correct that the opinions
4 you have with regard to the product Kaylo were formed
5 after 1964 when you returned to Toledo?

6 A Specifically about Kaylo, yes.

7 Q Thank you, sir.

8 MR. MCGOWAN: I believe that is it.

9 MR. SMITH: Page 125.

10 BY MR. SMITH:

11 Q To the extent there was a hazard from
12 asbestos pipecovering products, that hazard was
13 created by the fact that, when they were cut and used,
14 certain asbestos were released into the air, correct?

15 A Correct.

16 BY MR. MCGOWAN:

17 Q In that sense, the Kaylo asbestos-
18 containing product is similar in its characteristics
19 to other asbestos-containing pipecovering?

20 A I don't know that. As I understand, the
21 others had a hell of a lot more asbestos in them than

1 Kaylo ever had.

2 Q If 85 percent magnesia pipecovering product
3 had 15 percent asbestos in it and Kaylo had 15 percent
4 asbestos in it, do you agree that they would be
5 comparable?

6 A Not necessarily. Depends on how much
7 tighter one held it than the other.

8 MR. McGOWAN: Page 128.

9 BY MR. McGOWAN:

10 Q In the 1950s, in the period of 1953 to 1958,
11 you knew that Owens-Corning was selling the Kaylo
12 pipecovering product, correct?

13 A Nobody ever specifically told me that.

14 Q But you knew that?

15 A Well, I assume it was a part of the line, I
16 guess, you might say.

17 Q And at the time in the 1950s when you knew
18 that Owens-Corning was selling the Kaylo product --

19 A When did Owens-Corning start selling?

20 Q 1953. During that period, 1953 to 1958, am
21 I correct that you knew that that was part of the

1 product line of Owens-Corning?

2 A What dates are we talking about?

3 Q 1953 to '58.

4 A Now, that is when I was in New York.

5 Q Right.

6 A So I had occasion to see -- so I had no
7 occasion to see it used or we didn't have warehousing
8 in New York or anything.

9 Q Your direct personal responsibility for it
10 began in the '60s, right?

11 A Right.

12 BY MR. SMITH:

13 Q But you knew that this was part of the
14 company's product line in the 1950s even though you
15 didn't have personal responsibility for it, correct?

16 A Yeah, I would say that is right.

17 MR. SMITH: Page 131.

18 BY MR. SMITH:

19 Q The opinions that you had in the '50s that
20 you previously expressed this morning were opinions
21 based upon information that was available to you at

1 the time, correct?

2 A Yes.

3 Q They are opinions that you held since the
4 1940s and 1950s, correct?

5 A Right.

6 Q Mr. Thomas, let me make sure I understand
7 the statement you just made with regard to your
8 opinions.

9 Those were opinions about asbestos in
10 general without reference to any specific asbestos-
11 containing products?

12 A Right.

13 Q When you say asbestos in general, you mean
14 asbestos-containing insulation products in general as
15 opposed to just the product Kaylo?

16 A I think, now, asbestos is asbestos, however
17 you use it.

18 Q Whether it was in asbestos products or
19 otherwise?

20 A Right.

21 MR. SMITH: That concludes our reading of