

FILE NAME: Kelly Moore (KM)

DATE: 2002 May 31

DOC#: KM048

DOCUMENT DESCRIPTION: Legal - Deposition of Herbert R. Giffins

1 NO. B-150,374-AK
2 WILLIAM L. COTTON, ET AL) IN THE DISTRICT COURT OF
3)
4 VS.) JEFFERSON COUNTY, TEXAS
5)
6 A.P. GREEN REFRACTORIES)
7 COMPANY, ET AL) 60TH JUDICIAL DISTRICT
8 NO. 41,862
9 VERDA SUTTON AND P.D.) IN THE DISTRICT COURT
10 SUTTON)
11 VS.)
12) HARDIN COUNTY, TEXAS
13)
14 ACands, INC., ET AL) 356TH JUDICIAL DISTRICT
15)

11
12 VIDEOTAPED DEPOSITION OF

13 HERBERT R. GIFFINS

14 MAY 31, 2002

15 VIDEOTAPED ORAL DEPOSITION OF HERBERT R. GIFFINS,
16 produced as a witness duly sworn by me at the
17 instance of the Plaintiffs, taken in the above
18 styled and numbered causes on the 31st of May, 2002,
19 from 10:06 a.m. to 7:02 p.m., before Kathy Miller,
20 Certified Shorthand Reporter No. 739 in and for the
21 State of Texas, at the offices of Brown McCarroll,
22 L.L.P., 2001 Ross Avenue, Suite 2000, Dallas, Texas,
23 75201 pursuant to the Texas Rules of Civil Procedure
24 and the provisions stated on the record or attached
25 therein.

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Dallas, Texas 75201

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MR. COON: Take it pursuant to the rules?

MR. HAZEN: Pursuant to the rules, reserve objections as to form and responsiveness.

MS. WILLIAMS: Do we have an objection made by one defendant is good for all defendants?

MR. HAZEN: Good for all.

MR. COON: Sure. What I would like to do when he is ready, we will get him sworn in and just have the identity of those that showed up and who they represent.

THE VIDEOGRAPHER: Everybody ready?

MR. HAZEN: Ready.

THE VIDEOGRAPHER: One moment. We're on the record. The time is 10:08 a.m., May 31st, 2002, beginning of Tape 1.

HERBERT R. GIFFINS

having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

MR. COON: For purposes of the record we need the identity of the parties. Brent Coon on behalf of plaintiffs.

MS. BALLI: Melinda Balli on behalf

of Kellogg and Brown & Root Inc.

MS. YANOF: Cindy Yanof here on behalf of 3M Company.

MS. WILLIAMS: Pam Williams here for Fluor, F L U O R.

MR. THORPE: Larry Thorpe here for Quigley and Pfizer.

MS. FULLER: Michelle Fuller here for Cleaver-Brooks.

MR. VANCLEAVE: Mark VanCleave here for Borg Warner.

MR. NANTZ: Bill Nantz here for Certainteed, Union Carbide and Dana.

MR. SHUSTERMAN: Dan Shusterman, A&O Schwarz -- Smith.

MR. HAZEN: Scott Hazen on behalf of Kelly-Moore Paint Company.

MR. COON: Ready to proceed?

THE REPORTER: Ready.

EXAMINATION

BY MR. COON:

Q. Good morning, Mr. Giffins.

A. Good morning.

Q. Could I have you introduce yourself to the Ladies and Gentlemen of the Jury by stating your

1 full name and address, please, sir?

2 A. My name is Herbert Ronald Giffins, that's
3 spelled G I F F I N S. My home address is 7004
4 Orchard Hill Court, Colleyville, Texas, 76034.

5 Q. Mr. Giffins, where is Colleyville?

6 A. It's about midway between Dallas and Fort
7 Worth, going west from here.

8 Q. My firm has noticed to the attorneys for
9 Kelly-Moore a -- what is called a corporate
10 representative, or a person to be a spokesperson for
11 the company, with respect to some asbestos-related
12 matters, and you are the person that Kelly-Moore has
13 presented this morning in that regard, and so I want
14 to ask you some background questions first before we
15 get into the substantive discussion this morning.

16 First, have you had an opportunity to be a
17 spokesperson for Kelly-Moore in any matters in the
18 past, as a -- what you would call a corporate
19 representative?

20 A. In matters relating to what, sir?

21 Q. Just any type of matters.

22 A. Yes.

23 Q. Could you just give me a general summary
24 of the type of matters you have been involved as a
25 corporate spokesperson for Kelly-Moore in the past?

1 A. Primarily related to the asbestos
2 involvement with Paco.

3 Q. Any circumstances other than being a
4 representative for Kelly-Moore in asbestos-related
5 matters?

6 A. I've represented the company in -- at
7 meetings, and things like that. I am not sure I
8 understand your question entirely.

9 Q. Okay. Let me bifurcate it then. With
10 respect to litigation matters, have you been a
11 corporate spokesperson for cor -- Kelly-Moore in
12 anything other than asbestos-related matters?

13 A. No, sir.

14 Q. And other than the asbestos-related
15 matters, have you been a spokesperson for
16 Kelly-Moore on any other type of litigation of a
17 corporate nature, or anything like that?

18 A. I was involved years ago in a couple
19 depositions. One had to do with a -- a product that
20 was sold through one of our stores, and then another
21 deposition had to do with a -- a trial, had to do
22 with an employee at one of the stores that we had
23 acquired.

24 Q. And you are presently employed by
25 Kelly-Moore, correct?

1 A. Yes, sir.

2 Q. And what is your title, sir?

3 A. My current title is president, Southwest
4 Division.

5 Q. And what does the Southwest Division
6 encompass?

7 A. It takes in basically Texas, Oklahoma,
8 Colorado, Arkansas and Arizona.

9 Q. Mr. Giffins, how many times in the past
10 before today have you given any type of testimony
11 regarding an asbestos-related matter?

12 A. Probably, I'd say, four, maybe five times.

13 Q. And how far back do those go?

14 A. My first one would have been October. It
15 would have been in the -- probably the fall of 2001.

16 Q. I take it you have had three or four
17 others since then, before today?

18 A. Yes, sir. Yes.

19 Q. Did you give your testimony by deposition
20 like you're doing today, or were one or more of
21 those involving trial testimony where you went to a
22 courthouse?

23 A. They were depositions, sir.

24 Q. Were they all matters involving a person
25 who claimed an asbestos-related injury?

1 A. Yes, sir.

2 Q. Did they all involve a claim by the
3 individual to exposure to asbestos-containing
4 materials made at some point in time in the past by
5 Kelly-Moore?

6 A. The depositions were to address those
7 issues, yes.

8 Q. Were all of those claims pending here in
9 Texas, or were they outside of Texas?

10 A. There are some outside of Texas.

11 Q. Could you tell me what other states you
12 have given case testimony in?

13 A. I believe there is one related to
14 California, and I -- you have -- the problem I am
15 having, a lot of these were all bunched together.

16 Q. Yes, sir.

17 A. I had, like, two or three, so they may
18 have -- some of those may have been with the Texas,
19 or -- and at the same time related to a California
20 case, but I believe there was a California case, and
21 then there was probably one in Michigan, or
22 somewhere up in that area.

23 Q. Before your testimony today, did you have
24 an opportunity to go back and review the prior
25 deposition transcripts you have given?

1 A. Yes, sir.

2 Q. Is there anything else that you had an
3 opportunity to review, to assist you in testifying
4 today, other than those depositions?

5 A. I've gone through the documents that I
6 believe that you were provided. There were about
7 six boxes of documents that you were provided. I --
8 I went through those. I went through the
9 depositions as I had mentioned. That was basically
10 it.

11 Q. Mr. Giffins, are you aware generally of
12 the history of Kelly-Moore with respect to
13 asbestos-related litigation?

14 A. Yes, sir.

15 Q. Are you aware of persons being designated
16 as a corporate representative of Kelly-Moore prior
17 to yourself?

18 A. Yes, sir.

19 Q. Could you tell me the names of those
20 persons that you know of as having been the
21 corporate representative or the spokesperson for
22 Kelly-Moore before you took over that role in 2001?

23 MR. HAZEN: Objection, form. Go
24 ahead.

25 A. I'm familiar with Doug Merrill, obviously.

1 A. In 1978.

2 Q. And do you know when they acquired that
3 facility?

4 A. In '78. Oh, when Kelly-Moore --

5 Q. Yes, sir.

6 A. -- did?

7 Q. Yes, sir.

8 A. The Kelly-Moore -- originally in Broken
9 Arrow, they opened that facility in 1975, and prior
10 to that, though, they -- the location was in Tulsa,
11 and they opened that in '69. So, in tracking it
12 back, it would have been '69 in Tulsa, '75 they
13 moved to Broken Arrow.

14 Q. How about Frederick Marquardt? Do you
15 know Frederick Marquardt?

16 A. I'm not familiar with that name.

17 Q. Okay. How about Patrick McDonald?

18 A. Yes, I'm familiar with Patrick.

19 Q. How is it you know Patrick McDonald?

20 A. He is our vice president of human
21 resources and auditing.

22 Q. Still employed there, I take it?

23 A. Yes, sir.

24 Q. Have you had an opportunity to review any
25 of his prior deposition or trial transcripts

1 He's probably the most recent. And as far as I
2 know, he was the only one that was primarily
3 representing the company in these asbestos issues.

4 Q. (By Mr. Coon) Okay. Is it your
5 understanding that Doug Merrill was the -- what you
6 would call the principal point person for these
7 types of matters before yourself?

8 A. Yes, sir.

9 Q. Did you know a Doyle Freeman?

10 A. Bill Freeman?

11 Q. I just have Doyle Freeman. Do you know a
12 Doyle?

13 A. I think it's William Doyle Freeman.

14 Q. And I take it you do know --

15 A. Yes.

16 Q. -- at least William Doyle? How is it you
17 know him?

18 A. Mr. Freeman owns the Freeman Drywall
19 Company, in Broken Arrow, Oklahoma, and he had
20 purchased that -- the assets of that company from
21 Kelly-Moore.

22 Q. And when was that a Kelly-Moore facility?
23 Do you know what years?

24 A. When it was last a Kelly-Moore facility?

25 Q. Yes, sir.

1 regarding these matters?

2 A. Sure have.

3 Q. And what about Mr. Merrill, have you
4 reviewed any of his prior transcripts?

5 A. Yes, sir.

6 Q. Have you had an opportunity to discuss
7 generally with him the -- the nature of the
8 questions that he was asked, and what your roles may
9 be as a corporate spokesperson for Kelly-Moore?

10 A. Sure have.

11 Q. Have you had an opportunity to talk to
12 other individuals at Kelly-Moore with respect to
13 assisting you in generally -- just preparing
14 yourself for being a spokesperson in these matters?

15 A. I have talked to ex-employees of
16 Kelly-Moore, yes, sir.

17 Q. Could you give me a general idea of the --
18 the types of things that you did to help prepare
19 yourself, outside of discussions that you had with
20 attorneys for Kelly-Moore?

21 A. You want a time line or do you just
22 want --

23 Q. Yes, sir. Generally you can just tell us.
24 I mean, we know that you're the spokesperson.

25 You've had an opportunity to review a number of

1 boxes of documents that Kelly-Moore has regarding
2 these issues. You have had an opportunity to give a
3 few prior depositions. You have been able to read
4 your prior depositions. You have also been able to
5 talk to some other Kelly-Moore persons that you have
6 identified, as well as review their transcripts.
7 And I am saying in addition to that, if you could
8 just kind of give us a summary of what your other
9 sources of information or preparation for these
10 types of proceedings would entail.

11 A. Okay. I think the best way to do it is to
12 track back how long I have been involved, because a
13 lot of this has transpired since basically April of
14 2001. That was when I was first asked to get
15 involved, and it wasn't until about, oh, I'd say,
16 August or fall of 2001 that I was involved in a --
17 from a -- a regular routine. Up until that point it
18 was a hit and miss.

19 Since then, I have talked to four or five
20 ex-employees, interviewed them on a one-to-one
21 basis.

22 Q. Can you give us the identity of those
23 persons?

24 A. Sure.

25 Q. Do you recall who they were?

1 A. John Winslow, Mr. Don Scranton, Mr. Bill
2 Harrison, Mr. Freeman, Bill Freeman. There was a
3 Tom -- I can't think of his last name now. I can't
4 think of his last name. There was an ex-employee.
5 It will come to me.

6 Q. Okay. Did you take any recorded
7 statements or any other kind of written notes with
8 respect to your meetings with those individuals?

9 A. I took my own notes, as I met with them,
10 yes.

11 Q. And do you still have those notes?

12 A. I do have them.

13 Q. Are they with Kelly-Moore, their
14 attorneys, or do you keep them in your personal
15 possession?

16 A. I had them -- they were in my personal
17 possession.

18 Q. Briefly, with respect to each of these
19 gentlemen, why is it that you sought them out, and
20 what was the nature of the discussions?

21 A. Primarily, because at the time, they were
22 either in sales or a management position with
23 Kelly-Moore during the period that Kelly-Moore owned
24 Paco, and they may have had some indirect
25 involvement, or whatever, and my purpose of meeting

1 with them was to find out what they knew, and so I
2 could tie the whole -- tie the whole thing together.

3 Q. With respect to each of these gentlemen,
4 first Mr. Winslow --

5 A. John Winslow?

6 Q. Yes, sir. When and where did you have an
7 opportunity to meet with him?

8 A. It would have probably been in the fall of
9 2001, because I didn't start talking to the
10 individuals until about that time.

11 Q. And what was his title that would have
12 caused you to solicit him for additional
13 information?

14 A. When he left the company, he was vice
15 president of store operations, and prior to that, he
16 had held norm -- numerous positions, starting out as
17 a salesman; and at one time, he was also the sales
18 manager for the company.

19 Q. Where does he reside now?

20 A. He's retired and he lives in northern
21 California. I want to say Petaluma area.

22 Q. Did you have an opportunity to personally
23 meet with him, or just by phone calls?

24 A. No, I have met with him personally, sir.

25 Q. Okay. More than one occasion?

1 A. One.

2 Q. One?

3 A. Personally I have met with him once. I
4 have talked to him one or two times since then over
5 the phone asking him a question, but my personal
6 meeting with him was only once.

7 Q. Okay. Did you know him before looking him
8 up for these purposes, as just being another
9 Kelly-Moore employee?

10 A. I had met -- when he left Kelly-Moore, he
11 went to work for some of our suppliers as a -- as a
12 manufacturer's rep, and I had met him or got to know
13 him that way first.

14 Q. Okay. Since we're going to go through a
15 number of your former employees and people that you
16 may have had dealings with as an employee of
17 Kelly-Moore, probably need to back up real briefly.
18 Could you tell us just real briefly, you know, where
19 you grew up, and how you got involved with
20 Kelly-Moore? If you had employment before
21 Kelly-Moore, what it was, and then once you got --

22 A. Sure.

23 Q. -- to Kelly-Moore if you can kind of walk
24 us through the chains of progression --

25 A. Sure.

1 Q. -- and promotion?

2 A. Very happy to. I was born and raised in
3 southern New Jersey. I attended private school
4 through high school. Went on for two years in the
5 seminary for religious education. Left that after
6 two years, went to work for a summer for Chrysler
7 Corporation on the assembly line, while I decided
8 what I wanted to do. Then, went to work for
9 Sherwin-Williams Paint Company, spent about 24 years
10 -- 24 and a half years with them in various
11 positions.

12 Q. What year would that have been that you
13 started at Sherwin-Williams?

14 A. '61.

15 Q. Okay.

16 A. I graduated from high school in '57.

17 Q. Okay. And you were with Sherwin-Williams
18 --

19 A. Either '60 or '61.

20 Q. You were with Sherwin-Williams from '61 to
21 about '85?

22 A. Yes, sir.

23 Q. And could you briefly tell us the roles
24 and responsibilities you had in your two-decade
25 tenure with Sherwin-Williams?

1 ownership, but oversaw the entire operation of the
2 store as far as sales, operations, and accounting.

3 Q. We're talking about Sherwin-Williams,
4 we're talking about the national chain that most
5 people know about.

6 A. Yes, sir.

7 Q. Paint stores?

8 A. Yes, sir.

9 Q. Wallpapers?

10 A. Right.

11 Q. And you retired from there in 1985?

12 A. I -- I didn't retire. I -- I left.

13 Q. Okay. And what was the purpose of leaving
14 that company in 1985?

15 A. I was approached by Kelly-Moore to join
16 their organization.

17 Q. Was this something where you were sought
18 out by them, or you sought them out, or --

19 A. Sort of.

20 Q. -- kind of mutual?

21 A. Sort of. The -- the president of the
22 company at the time knew me from Sherwin-Williams.

23 Q. And who was that gentleman?

24 A. Joe Christiano. He's our current
25 president and C.E.O.

1 A. I started out as an assistant -- what we
2 call -- they called in those days a credit manager
3 in one of their stores, and credit managers were
4 primarily assistant managers. And I started out in
5 a small store in Pennsylvania. I worked there a
6 couple years, then went to a larger store in
7 Pennsylvania. I was promoted to a larger store.

8 From there I went to their regional office and
9 worked in real estate and store planning. Spent a
10 couple of years doing that, and then was promoted to
11 their corporate headquarters in Cleveland, whereby I
12 was part of a start-up store planning department,
13 where we designed stores and signage and that type
14 of thing. And from there tried -- went on to
15 different other departments, different positions in
16 sales and in operations. And ultimately when I left
17 Sherwin-Williams in '85, I was a district manager
18 for them in the bay area, Northern California.

19 Q. And what were your responsibilities at
20 that time?

21 A. As a district manager?

22 Q. Yes, sir.

23 A. Primarily responsible for about 13 stores.
24 At that time, the way they were structured is the
25 district managers had full ownership, or not

1 Q. And where did the two of you meet?

2 A. Oh, boy. You're really testing my memory
3 here. We first met -- he was a personnel manager
4 for the North Central Division of the
5 Sherwin-Williams Company, and I think --

6 Q. Okay. So you knew him first as a
7 Sherwin-Williams --

8 A. Yes, sir.

9 Q. -- coworker?

10 A. Yes, sir.

11 Q. And, so, you -- you knew him way back when
12 as another employee at Sherwin-Williams, then
13 apparently he left Sherwin-Williams at some point in
14 time prior to you to go to work at Kelly-Moore?

15 A. Correct. And he and I had crossed paths
16 over the years during my 24 plus years with SW, and
17 -- in different venues.

18 Q. Do you know if he had made overtures with
19 respect to other Sherwin-Williams employees to come
20 to work at Kelly-Moore?

21 A. Uh-huh. Sure did.

22 Q. Do you have any idea generally the -- the
23 number, the type of people he was looking for to
24 come to work over there?

25 A. If I can describe Mr. Christiano, he -- he

1 looks for people that are hardworking, honest, and
 2 dedicated to get the job done.
 3 Q. And do you know --
 4 A. If that's what you're asking.
 5 Q. Yeah, generally. And do you know how
 6 Mr. Christiano ended up going to work at
 7 Kelly-Moore?
 8 A. I know the story, yes.
 9 Q. Okay. What's the story?
 10 A. Sherwin-Williams at the time was trying to
 11 buy Kelly-Moore Paint Company.
 12 Q. When was this?
 13 A. This probably would have been in the early
 14 '80s. I can't give you the exact time. Now, I am
 15 telling you a story third-hand because this is what
 16 Mr. Christiano told me.
 17 Q. Okay. We got to know how he got hired,
 18 huh?
 19 A. Yeah.
 20 Q. Okay.
 21 A. John Green, who was at the time the
 22 president of the Sherwin-Williams Company, wanted to
 23 buy Kelly-Moore, and he sent Mr. Christiano, who was
 24 the regional director for the West Coast, over to
 25 meet with Mr. Moore, and that's how Mr. Moore and

1 Mr. Christiano met, and from that relationship, I
 2 believe, Mr. Moore offered him a job.
 3 Q. Got to be careful who you send to
 4 negotiate, huh?
 5 A. That's correct, sir.
 6 Q. Okay. So, Mr. Christiano went over to, as
 7 I understand, talk to Mr. Moore about selling out,
 8 and instead was talked into coming to work for
 9 Kelly-Moore?
 10 A. That's correct, in basic terms.
 11 Q. And about what year was this?
 12 A. I would have to say it would have been
 13 early '80s because I came -- I went to Kelly-Moore
 14 in '85, and Joe had been there -- Mr. Christiano had
 15 been there two to three years prior to that, so it
 16 had to transpire somewhere around '80, '81 but the
 17 initial contact, I'm assuming, was made.
 18 Q. Okay. Do you know what position
 19 Mr. Christiano took when he came to work for
 20 Kelly-Moore in the early '80s?
 21 A. Uh-huh. He went over as president.
 22 Q. President of Kelly-Moore?
 23 A. Yes, sir.
 24 Q. Was this the role that Mr. Moore had prior
 25 to that?

1 A. Mr. Moore was president prior to that.
 2 Q. Okay. So, he hires Mr. Christiano from
 3 Sherwin-Williams to essentially take over his title?
 4 A. Correct, sir.
 5 Q. And what happened to Mr. Moore after that?
 6 Did he take a senior status or is there a C.E.O.
 7 status above the president or --
 8 A. He took a senior status, and I believe for
 9 a while was the C.E.O.
 10 Q. And then after Mr. Christiano was working
 11 at Kelly-Moore, he from time to time would go back
 12 to people he knew at Sherwin-Williams and offer them
 13 jobs?
 14 A. I can only tell you -- I can only tell you
 15 that he and I had made contact, and I know that he
 16 and Mr. McDonald made contact. Other than that, I
 17 can't tell you who else he may have talked to.
 18 Q. Okay. Is this the Mr. Patrick McDonald
 19 you told us about earlier?
 20 A. Yes, sir.
 21 Q. So he was also a former Sherwin-Williams
 22 employee?
 23 A. Yes.
 24 Q. Do you know if many employees at this same
 25 time frame were jumping ship, so to speak, from

1 Kelly-Moore to go to work for Sherwin-Williams at
 2 that -- at that same level of management?
 3 A. Some of that was going on. I can't tell
 4 you for what other reasons, for all the reasons,
 5 but, yeah, there was a little bit of change going on
 6 at the time.
 7 Q. Okay. Was Sherwin-Williams considered to
 8 be a competitor of Kelly-Moore at that time frame?
 9 A. You could say that -- I think
 10 Sherwin-Williams looked at Kelly-Moore more as a
 11 competitor than Kelly-Moore looked at
 12 Sherwin-Williams as a competitor.
 13 Q. Who were the other competitors in the
 14 market at that time?
 15 A. It and -- what -- what market?
 16 Q. Just in the markets both of them were in.
 17 I guess we're talking principally paint, are we not?
 18 A. Correct.
 19 Q. Okay. Let's first talk about the paints.
 20 A. Well, Kelly-Moore was -- when I came with
 21 the company in '85, is broad. It's over many
 22 states, so there's numerous competitors. If you're
 23 talking about who was Kelly-Moore's competitor in
 24 the bay area, that's going to be different than who
 25 was -- Kelly-Moore's competitor was in Texas and

1 that type of deal.

2 Q. So they had a lot of regional competitors
3 as opposed to national competitors?

4 A. There are nationals such as
5 Sherwin-Williams and Glidden, were involved, but,
6 then, yes, there were regional-type individuals.

7 Q. Okay. Is Glidden the only one that comes
8 to mind as another national competitor to
9 Sherwin-Williams and Kelly-Moore?

10 A. Benjamin Moore comes to mind.

11 Q. Okay. Anyone else?

12 A. Nothing rings a bell.

13 Q. Okay. When you went to work at
14 Kelly-Moore in '85 --

15 A. '85.

16 Q. -- what were the product lines that were
17 made or manufactured by Kelly-Moore at that time?
18 We know mostly paints, correct?

19 A. Well, that's basically all that
20 Kelly-Moore manufactured was paint.

21 Q. And what type of paints? We know house
22 paints, interior, exterior. Do they also have
23 industrial paints? Commercial grade paints?

24 A. No, Kelly-Moore is primarily what we
25 classify as an architectural house, and makes paints

1 how to make a duck, a kitten, or something, and then
2 paint it and put it in an oven or something.

3 Q. More ornamental ceramics as opposed to
4 tiles?

5 A. Yes. Correct.

6 Q. Okay.

7 A. And they were in the mining business at
8 one time, but this was all prior to me. The ceramic
9 business was sold not long after I came with the
10 company.

11 Q. Where were their mining operations? Did
12 you say mining?

13 A. Yes.

14 Q. Okay. What type of mining?

15 A. Minerals.

16 Q. What type of minerals?

17 A. Different types of things that may have
18 been used in coatings, or those types of compounds.

19 Q. Are we talking about silvers, platinum?
20 Asbestos is a mineral. We talking about asbestos?

21 A. No, it was not an asbestos-type material.
22 It was more -- I want to say like calcium or -- they
23 were -- just minerals that were mined that primarily
24 could be used in coatings. Nonhazardous-type
25 materials.

1 for residential, commercial-type use.

2 Since I have been there, I am not aware that we
3 ever were in the industrial coatings. At one time
4 they did manufacture some lacquers, but that was
5 quite some time ago.

6 Q. Okay. Now, we also know that they made a
7 number of textures and joint compounds at one point
8 in time.

9 A. That is correct.

10 Q. And as of the time you went to work there
11 in the mid '80s, was Kelly-Moore continuing to
12 manufacture those types of product lines?

13 A. No, sir.

14 Q. Do you know when they got out of the
15 manufacture or distribution of those types of
16 product lines?

17 A. Shut down the operation in 1982.

18 Q. Okay. From 1985 to the present, has
19 Kelly-Moore been involved in the manufacturing of
20 other product lines outside paints?

21 A. Well, when I -- at one time they owned a
22 ceramic company.

23 Q. Is that for ceramic tiles, floor tiles,
24 wall tiles?

25 A. That was ceramics like you go and learn

1 Q. Okay. Do you know where these mines were
2 located?

3 A. There was one up in Sacramento, California
4 area, Tulsa.

5 Q. Okay. And were these using the raw
6 materials, or the raw minerals that they were mining
7 out of this in some of their own product lines?

8 A. I believe there was one or two items that
9 they were using, but most of it was being sold on
10 the secondary market.

11 Q. Do you know what they were using in their
12 own products? Was this something they were using in
13 their joint compounds or paints?

14 A. I do not believe it was used in the joint
15 compounds. I believe it was more -- went into the
16 paint product itself.

17 Q. Okay. Did Kelly-Moore have the facilities
18 to produce their own raw materials for their paints,
19 or were those typically supplied by outside vendors?

20 A. Typically supplied by outside vendors.

21 Q. Did they have any of their own, what you
22 would call manufacturing facilities, to make some of
23 the actual different ingredients that went into the
24 paints?

25 A. Only thing that we did make for a while

1 was latex. We manufactured our own latex.
 2 Q. And with respect to the joint compounds
 3 that were made at some points in the past, did
 4 Kelly-Moore ever make any of the raw ingredients for
 5 those products?
 6 A. No. Everything was purchased from an
 7 outside source.
 8 Q. Okay. Once you were at Kelly-Moore in
 9 '85, could you give us a brief summary of the
 10 different jobs you had over the next 15 years, and
 11 what each of those roles would have entailed?
 12 A. When I came to work with Kelly-Moore in
 13 1985, I was brought in as a merchandise manager,
 14 what was called a merchandise manager, and I was
 15 responsible for the buying of the nonpaint items
 16 that went into the Kelly-Moore paint stores.
 17 Q. Is this like paint brushes, rollers?
 18 A. Brushes.
 19 Q. Trays?
 20 A. Yes, sir.
 21 Q. Tarps, all that stuff?
 22 A. Correct.
 23 Q. Okay.
 24 A. And then I was also in charge of the
 25 advertising department.

1 Q. Was this advertising nationally or
 2 locally?
 3 A. Well, we're a regional company, so it
 4 would have just have covered the regional needs of
 5 the company.
 6 Q. Okay. And when we're talking about
 7 Kelly-Moore being a regional company, what do you
 8 mean?
 9 A. It's -- it doesn't -- we don't market
 10 nationally. We don't go from coast to coast, north
 11 to south --
 12 Q. Okay.
 13 A. -- primarily. We're basically -- you can
 14 almost right now draw a line down from the State of
 15 Colorado down into Texas and look at us as being
 16 west of that.
 17 Q. Would you say just generically,
 18 geographically, mostly the southwestern United
 19 States?
 20 A. No. Because it goes all -- we have stores
 21 in -- in Washington state; we have stores in
 22 California, in Colorado. So -- we don't have them
 23 in New Mexico, but pretty much we're a western
 24 company.
 25 Q. Okay. Have -- do you know what states you

1 do have other than the ones you just named? Talked
 2 about Washington, California, Oregon?
 3 MR. HAZEN: Objection, form.
 4 A. Yeah.
 5 Q. (By Mr. Coon) Do you know if they're in
 6 Oregon?
 7 A. Uh-huh.
 8 Q. Do you have stores in Oregon?
 9 A. Yeah, we are.
 10 Q. Nevada?
 11 A. Yes.
 12 Q. Utah?
 13 A. No.
 14 Q. Idaho?
 15 A. Yes.
 16 Q. Colorado?
 17 A. Yes.
 18 Q. Arizona?
 19 A. Yes.
 20 Q. Texas?
 21 A. Yes, sir.
 22 Q. Oklahoma still?
 23 A. Yes, sir.
 24 Q. Arkansas?
 25 A. Yes.

1 Q. Louisiana?
 2 A. No.
 3 Q. Okay. So you generally don't go east of
 4 Texas?
 5 A. No, sir.
 6 Q. Do you go south of Texas? Do you do
 7 anything down in Mexico?
 8 A. No.
 9 Q. Do you do anything outside of the United
 10 States anywhere?
 11 A. As far as company stores?
 12 Q. Yes, sir.
 13 A. No, sir.
 14 Q. What about just sales?
 15 A. A few years -- couple years ago they
 16 started selling some material to China. That's done
 17 through an export.
 18 Q. Okay. All right. So, anyway, I'm sorry,
 19 we're jumping around again. We're '85
 20 merchandising?
 21 A. Right.
 22 Q. Then what?
 23 A. And then two years later, I was promoted
 24 to vice president of store operations.
 25 Q. And what did that involve?

1 A. That involved management -- management or
2 overseeing of all of the company-owned stores as far
3 as the operations end of it, and that involved the
4 hiring of the people, the training of the people,
5 the setting up of the stores, the design of the
6 stores, anything to do with an operational part of
7 the store.

8 Q. And after that?

9 A. And after that, I did that until about
10 1994, when I also took on some responsibility as
11 president of acquisition in the northwest. And then
12 in '96, January of '96, I came down to Texas, to
13 Hurst, as President of the Southwest Division.

14 Q. And the title there is President of the
15 Southwest Division?

16 A. Yes, sir.

17 Q. Is that the title you still hold?

18 A. Yes, sir.

19 Q. And how many different divisions are there
20 within Kelly-Moore?

21 A. There's two separate operating divisions:
22 The Southwest, and Pacific.

23 Q. And what is your territory as president of
24 the Southwest Division?

25 A. As I mentioned earlier, it takes in Texas,

1 A. Up until four years ago, it was all
2 privately owned by Mr. Moore, and he sold a portion
3 of it to the employees about four years ago.

4 Q. And do you know what percentage of the
5 shares he released back to the employees?

6 A. About 42 percent.

7 Q. Were all employees eligible for --

8 A. Yes, sir.

9 Q. And did they just buy shares for a price
10 that he set or was it distributed based on seniority
11 or how did that work?

12 A. No, it's put into a -- it's a retirement
13 account basically, and then you get so many shares.

14 Q. Is this kind of like a ESOP program?

15 A. ESOP, yes, sir.

16 Q. And your shares are acquired through
17 contributions, and merit and seniority, or
18 combination?

19 A. It's all based, I believe on -- I think
20 the program is based on your salary. You get so
21 many shares based on your salary.

22 Q. And do you know how the shares are fixed
23 in terms of value?

24 A. I do not.

25 Q. Is there any floating scale of the value?

1 Colorado, Arkansas, Oklahoma, Arizona. I think
2 that's it.

3 Q. Okay. And Pacific Division is
4 predominantly, I guess, California, Oregon and
5 Washington?

6 A. Pacific would cover Nevada; Oregon;
7 Seattle, Washington; and Northern California.

8 Q. Has this geographic territory been
9 relatively stable over the last couple of decades?

10 A. Geographic, are you talking about
11 Southwest, or --

12 Q. Yes, sir. No. Both. Have you-all
13 expanded or contracted, generally speaking, or
14 stayed the same?

15 A. Oh, we've expanded.

16 Q. Okay. What do you do now as president of
17 the Southwest Division?

18 A. My responsibilities primarily are the
19 bottom line profitability of the entire division,
20 and that causes me to interface with the other
21 departments such as operations, sales, and
22 accounting, and the factory, to achieve that
23 objective.

24 Q. Okay. Is Kelly-Moore publicly or
25 privately held?

1 A. It's re-evaluated every year. I do know
2 that, because we get a new statement every June or
3 so which indicates what the value of the shares are.

4 Q. And do we have any idea what the total
5 asset of the 42 percent of the shares is estimated
6 to be?

7 A. I couldn't tell you that, sir.

8 Q. Are we talking, I assume, millions of
9 dollars?

10 MR. HAZEN: Objection, form.

11 A. I couldn't -- I really couldn't tell you.
12 I mean, I was -- you know, anything I tell you would
13 be an assumption.

14 Q. (By Mr. Coon) Okay. Do you have any idea
15 what your stake in the company is as a shareholder?

16 A. My personal?

17 Q. Yes, sir.

18 MR. HAZEN: Objection, form.

19 A. I have a -- an idea of what it was a year
20 ago. I don't know what it is today.

21 Q. (By Mr. Coon) Okay. Let's go a year ago.
22 We understand market volatility.

23 A. Yeah. Very much so.

24 Q. But, a year ago could you give us just
25 generally a rough estimate?

1 A. Of the dollar value?

2 Q. Yes, sir, just in terms of shares, shares
3 times value.

4 MR. HAZEN: Mr. Giffins, I'm going
5 to object to the form of the question. I am going
6 to advise you that divulging your personal finances
7 within the company is not something that you're here
8 to give in your deposition today. So you can choose
9 to divulge that information, or if you wish, on your
10 own decision.

11 THE WITNESS: Actually I prefer not
12 to, but I mean if I have to, I will.

13 MR. COON: Okay. We agree you don't
14 have to if your attorney instructs you not to, but I
15 would -- our level of inquiry there, I'm not
16 typically interested in anybody's personal assets,
17 sir. The reason that we're looking into it is
18 because it may lead to some issues with respect to
19 your opinions in the matter, if you have a vested
20 interest in the company that you're testifying for,
21 so for those reasons we believe it to be relevant.

22 MR. HAZEN: Again, Mr. Giffins, I'm
23 going to caution you. I'm going to let you make
24 your decision whether you choose to divulge that
25 information or not, but I'm going to advise you that

1 A. All -- all employees.

2 Q. If Kelly-Moore went bankrupt, went out of
3 business, or whatever, for whatever reasons, your
4 -- the shares that you have set aside as part of
5 your retirement under your ESOP, would then have
6 nominal or no value?

7 MR. HAZEN: Objection, form.

8 A. I don't know all the legal issues about
9 that type of thing, but it sounds logical.

10 Q. (By Mr. Coon) Okay.

11 A. But I can't tell you for sure what the
12 legal issues are.

13 Q. Okay. Is there a listing of -- with the
14 various persons that are in management at
15 Kelly-Moore, what their titles are, and what they
16 make? Is that something that's available to all the
17 employees?

18 MR. HAZEN: Objection, form.

19 A. I have never seen anything like that.

20 Q. (By Mr. Coon) Okay. Is there a -- a
21 board? Is there -- could you tell me basically how
22 the structure works? Is there an operating board
23 for Kelly-Moore?

24 A. There is a board of directors for
25 Kelly-Moore.

1 you're under no compulsion to divulge that
2 information.

3 A. Just from a personal thing, I don't see
4 what that's got to do with what we're talking about.

5 Q. (By Mr. Coon) Okay. Fair enough. Let me
6 just ask a couple other questions, then. I won't --
7 we understand you don't want to answer that one
8 right now.

9 Is your retirement based in part, as I
10 understand, on the shares that Mr. Moore has
11 distributed to the employees, which would include
12 you?

13 A. The ESOP program provides a retirement
14 vehicle, yes.

15 Q. Okay. And if Kelly-Moore continues to
16 remain profitable, your retirement would be worth
17 more than if Kelly-Moore is for whatever reasons
18 unprofitable?

19 A. Well, from my personal retirement, yes,
20 because there is no retirement program at
21 Kelly-Moore.

22 Q. Right.

23 A. The ESOP provides the employees the
24 ability to have a -- a viable retirement program.

25 Q. Sure.

1 Q. Okay. Do you know who is on the board of
2 directors?

3 A. I know a couple of the people that are on
4 there. I know of a couple of people that are on
5 there.

6 Q. Are they all employees of Kelly-Moore?

7 A. No.

8 Q. Are any of them employees of Kelly-Moore?

9 A. Yes.

10 Q. Do you know any of the individuals who are
11 not members of Kelly-Moore who still have a board
12 position there?

13 A. Would you repeat that again, please?

14 Q. Yes. Do you know -- there are people --
15 as I understand, you know there are people on the
16 Kelly-Moore board that are not Kelly-Moore
17 employees.

18 A. Correct.

19 Q. Do you know who they are and what they do?

20 A. They're family.

21 Q. Okay. I am just trying to find out why
22 they would have people on the board that aren't
23 employed there. You just answered that.

24 A. They're family.

25 Q. Family members?

1 A. Yeah.
 2 Q. This is family members of Mr. Moore?
 3 A. Yes.
 4 Q. The founder?
 5 A. Yes.
 6 Q. Is there a Kelly, a Mr. Kelly in the
 7 Kelly-Moore?
 8 A. There used to be, he's since deceased.
 9 Q. Oh, so if we were to go back on the
 10 history of Kelly-Moore, you had Mr. Kelly and
 11 Mr. Moore and they formed the company known as
 12 Kelly-Moore?
 13 A. Yes, sir.
 14 Q. And Mr. Moore became the president at some
 15 point in time and then he hired Mr. Christiano to
 16 replace him a number of years ago?
 17 A. That's correct. Basically.
 18 Q. Mr. Christiano still holds that title?
 19 A. He's president and C.E.O.
 20 Q. Okay. He is president and C.E.O. now?
 21 Who do you report to?
 22 A. Mr. Christiano.
 23 Q. And who has the same hat that you do on
 24 the Pacific Division?
 25 A. There is no one else.

1 Q. Okay. Well --
 2 A. He runs -- he's -- he basically is the guy
 3 who -- for the Pacific Division.
 4 Q. Okay. So, he does what you do for the
 5 Pacific Division?
 6 A. Correct. And for the whole company in
 7 theory. He's -- he basically is my boss.
 8 Q. Okay. Is that the only boss you have?
 9 A. Yes, sir.
 10 Q. Okay. So you're second in command?
 11 A. I don't know if -- I guess you could say
 12 that, but there are many people out there, basically
 13 think they're my bosses, but no.
 14 Q. Is your wife one of them?
 15 A. Mine -- yes.
 16 Q. Okay. Mr. Giffins, could you give us just
 17 a basic history of Kelly-Moore?
 18 A. Sure. Very happy to.
 19 Q. Your understanding of their development.
 20 I mean, you told us a little bit about the regional
 21 nature in paints, but if you could just go back and
 22 enlighten us a little bit about who they are and
 23 where they came from.
 24 A. The company was founded, I -- in '46, by
 25 Mr. Moore, when he -- he had just come back from

1 combat. He was in the Navy during the second world
 2 war, and he came back to the bay area, started the
 3 company. Hooked up with Mr. Kelly, who at that time
 4 had retired from the Glidden Paint Company, and
 5 Mr. Moore knew him from when he worked for Glidden.
 6 He worked as a salesman, I believe, at one time for
 7 Glidden, and that's how he and Mr. Kelly sort of new
 8 each other.
 9 And started the company in '46, and then bought
 10 Mr. Kelly out somewhere in the early '50s, and has
 11 since owned the company since -- well, since then.
 12 Q. Were they originally a California located
 13 company?
 14 A. Yes.
 15 Q. So they generally, expanded west -- or
 16 east over time?
 17 A. Yes, sir.
 18 Q. Do you know when they first acquired
 19 offices in Texas?
 20 A. We first moved to Texas in 1963 when we
 21 bought Hanna Paint Company who was based here in
 22 Dallas.
 23 Q. And what other facilities has Kelly-Moore
 24 acquired in Texas since then?
 25 A. I am not aware that we acquired any

1 facility -- you say facilities. Are you talking
 2 about companies?
 3 Q. Sure. Either -- either any other
 4 companies that you acquired where you retained an
 5 additional presence here other than in Dallas. Or,
 6 just new offices set up by Kelly-Moore here in
 7 Texas.
 8 A. Well, we bought Hanna in '63, and then
 9 built our plant in Hurst, Texas in '70.
 10 Q. Okay.
 11 A. Opened that in '70.
 12 Q. And what did the plant do?
 13 A. Made paint.
 14 Q. Does it still make paint?
 15 A. Yes, sir.
 16 Q. And did the facility that you acquired in
 17 '63 -- what was their name?
 18 A. Hanna.
 19 Q. Hanna?
 20 A. Excuse me, Hanna. I believe it was
 21 H A N N A.
 22 Q. And was Hanna also a -- just a paint
 23 manufacturer?
 24 A. They were a paint manufacturer.
 25 Q. Do you know if they made anything else

1 other than paint?
 2 A. I could not tell you, sir. Could not tell
 3 you.
 4 Q. Do you know if they made any textures,
 5 joint compounds, anything like that?
 6 A. I couldn't tell you. I don't believe so.
 7 I wouldn't swear to it.
 8 Q. Okay. Prior to the acquisition of the
 9 Hurst facility to make paints, where else was
 10 Kelly-Moore actually manufacturing their paints?
 11 A. Okay. The Hurst facility, we built.
 12 Q. Right.
 13 A. We owned. We bought the land and built
 14 that. So we didn't -- that's something that --
 15 Q. It was not an acquisition?
 16 A. It was not an acquisition. Yes, sir. We
 17 have plants in California. We have a plant in
 18 Arizona. We have a plant in Seattle, Washington.
 19 Those are the operating plants today.
 20 Q. For the Southwest Region, where are the
 21 headquarters? Hurst?
 22 A. Hurst, yes, sir.
 23 Q. Is that where you typically report to?
 24 A. That's where I sort of sit down, yes.
 25 Q. That's where your office is when you're in

1 record at 10:53.
 2 (A recess was taken.)
 3 THE VIDEOGRAPHER: Back on the
 4 record. The time is 11:09.
 5 Q. (By Mr. Coon) Mr. Giffins, during the
 6 break I went back over the notes. There was a
 7 couple things I wanted to pick up with you that I
 8 had not completely covered. We went on to something
 9 else. You told me about the four gentlemen that you
 10 had talked to as -- helping you make notes on the
 11 subject matters you may be discussing today. One is
 12 Mr. Winslow. You told us about him. Mr. Harrison,
 13 where does he live?
 14 A. Bill Harrison?
 15 Q. Yes, sir.
 16 A. He is retired, and he is living in Oregon.
 17 Q. Do you know what city?
 18 A. I keep -- I want -- Bend comes to mind but
 19 I'm not sure that's true.
 20 Q. Okay. Mr. Freeman?
 21 A. He lives in Oklahoma.
 22 Q. And what city?
 23 A. I can't answer that. It's somewhere near
 24 Broken Arrow.
 25 Q. Okay. What was his title?

1 your office?
 2 A. When I'm in my office, yes.
 3 Q. Are you on the road a lot?
 4 A. Yes and no. This -- this thing has taken
 5 up a lot of my time, lately.
 6 Q. This thing being --
 7 A. The Paco asbestos issues with Kelly-Moore.
 8 Q. Okay. Well, let's talk about that.
 9 MR. HAZEN: Hey, Brent.
 10 THE WITNESS: Can we take a break?
 11 MR. HAZEN: Yeah, I'm just saying
 12 if we are going to move into that, we have been
 13 going about an hour, maybe we can make a short
 14 break.
 15 MR. COON: Oh, sure. And anytime,
 16 Mr. Giffins, I know you have got some back problems,
 17 any time you need to take a break, stand up, walk it
 18 off, let me know, okay?
 19 THE WITNESS: Actually my back is a
 20 little bit better than my ability to stay out of to
 21 the bathroom. I drink a lot of water.
 22 MR. COON: Okay. Either way. We're
 23 happy to break for either one. Okay?
 24 THE WITNESS: Thanks.
 25 THE VIDEOGRAPHER: Going off the

1 A. His title when he was with the company?
 2 Q. Before he retired. Yes, sir.
 3 A. Well, when he -- when he left the company,
 4 he was a -- in charge of the factory. He was
 5 general -- I guess you can call him the general
 6 manager of the factory. He was involved with the
 7 sales part of it --
 8 Q. Okay.
 9 A. -- in Broken Arrow.
 10 Q. Okay. And Mr. Scanton?
 11 A. Don Scanton?
 12 Q. Was it Scanton?
 13 A. Scanton.
 14 Q. Okay. Mr. Scanton?
 15 A. S K R A N T O N.
 16 Q. Where is he at now and what was his title?
 17 A. He is retired. He lives in Palm Springs,
 18 California, and he was a vice president of sales at
 19 one time for the company.
 20 Q. Okay. We talked a lot about the different
 21 types of facilities you had and over the break I
 22 picked up one of your brochures. This is
 23 Kelly-Moore Exhibit 1129, and it appears to be one
 24 of -- I didn't see the date on it. But it appears
 25 to be one from the '60s. If you look at some of the

1 photos, the cars seem to be from that era. And I --
 2 there is a number of things in here I want to
 3 briefly talk with you about, kind of help us get a
 4 better idea of some -- some of the issues. Inside
 5 there I think there is a picture of Mr. Moore and
 6 Mr. Kelly, the founders?

7 A. That's correct.

8 Q. And I can't tell much off of that. But,
 9 you get to here, talks about the main office being
 10 in San Carlos, California, is that still the main
 11 office headquarters?

12 A. That is correct.

13 Q. At this time, it listed -- again, I don't
 14 know what year, but the factories, paint and
 15 drywalls was Dallas, Houston, Ontario and San
 16 Carlos. Are all those offices still open?

17 A. Let me see this a minute, if I may.

18 Q. Yes, sir.

19 A. Dallas is not -- is no longer open.

20 Q. Has that been replaced with the Hurst
 21 facility?

22 A. That has been, correct.

23 Q. And that's because that opened in '70, so
 24 you did not need the Dallas office anymore?

25 A. No, that was closed down when we opened

1 Q. (By Mr. Coon) Okay. It appears to be
 2 somewhat of a summary that was done by Mr. Merrill
 3 at some point in the past, that kind of set out some
 4 of the shops and the years they were open.

5 A. It was done in -- evidently based on the
 6 signature here, it looks like 12 of '82 --

7 Q. Okay.

8 A. -- is when he prepared this.

9 Q. That's based on what looks to be his
 10 signature below it with a date?

11 A. That's correct.

12 Q. Okay. And he indicated in here, I think
 13 on Page 1, the Houston facility was open around
 14 '67. It was a drywall manufacturing operation, and
 15 closed around '74?

16 A. Four.

17 Q. Does that sound about right?

18 A. Yeah. I would trust this better than my
 19 recollection.

20 Q. Okay.

21 A. I was close on the opening.

22 Q. Sure.

23 A. But I was a little short on the closing.

24 Q. Okay. And then if we go back to this
 25 chart, the next area, we have the subsidiary

1 the -- the Hurst building.

2 Q. Sure.

3 A. Houston, as far as a factory, and -- and
 4 drywall, that's closed down. Ontario is closed.

5 Q. Okay. With Houston, do you know the years
 6 that they were open and closed?

7 A. I want to say '66 to maybe '72, because
 8 they were -- I think there was still some work done
 9 in Houston after Hurst was built. I think it would
 10 be around '66, '65, maybe, to '71, '72.

11 Q. Okay. Let me show you something to read
 12 contemporaneously with it. This is Kelly-Moore
 13 1003. It looks like notes from Mr. Merrill. I am
 14 presuming that was probably Douglas Merrill. Have
 15 you seen that before?

16 MR. HAZEN: And, Brent, is that a
 17 Bates stamp you're referring to down in the bottom
 18 corner or --

19 A. It's a KM --

20 MR. HAZEN: Yeah, can you just tell
 21 me that number? KM 1003?

22 A. Yes.

23 MR. COON: Yes, sir.

24 MR. HAZEN: Okay.

25 A. I have seen this at one time, yes.

1 manufacturing facilities, what are those?

2 A. Fresno --

3 Q. Fresno, California?

4 A. Yes.

5 Q. Is that facility still open?

6 A. No. I'm not sure what that would have
 7 been, sir, in Fresno.

8 Q. Okay. What are we talking about when we
 9 say the subsidiary manufacturing facilities, versus
 10 -- versus the ones you described earlier as the
 11 factories?

12 A. Okay. At the time, I mentioned they --
 13 they were in the ceramic business.

14 Q. Yes, sir.

15 A. They were also in the mineral business.
 16 And --

17 Q. Being the mining?

18 A. Mining.

19 Q. Right. I think the brochure talks about
 20 that.

21 A. Okay. And they also at the time made the
 22 metal for the -- when you do drywall, the metal that
 23 goes around the corners, and that type of thing.

24 Q. Okay.

25 A. And I believe that's what the Newark

1 reference is. I am not sure about Oxnard, nor the
2 -- the Van Nuys. I really can't tell you what they
3 would have been at that time.

4 Q. Okay. And those were other facilities in
5 California apparently at one time?

6 A. Yes, sir.

7 Q. Okay. Then we have the mining operations
8 listed under that. That would be the ones you just
9 described earlier?

10 A. That's correct.

11 Q. It lists those, apparently four or five
12 mining operation locations in California and Nevada?

13 A. Correct.

14 Q. Okay. And do you know if any of those are
15 in operation at this time?

16 A. I believe they are not.

17 Q. Okay. And then a reduction --

18 A. Well, it may -- I -- we don't -- we're not
19 involved with them.

20 Q. Right.

21 A. You know, they may be in operation by
22 somebody else, but we don't have anything to do with
23 them.

24 Q. You would have sold them out?

25 A. Yes, sir.

1 Q. Okay. The reduction mill. What is that?

2 A. I have no idea. I -- my interpretation
3 would be that that's where they process some of the
4 minerals, by reduction, but again, this was before
5 my time.

6 Q. Okay. Maybe where they take the raw ore
7 and reduce it to something in their processing?

8 A. That would be my assumption, yes.

9 Q. Okay. And then we have sales branches
10 listed next.

11 A. Correct.

12 Q. First California and Nevada, and I guess
13 it just lists a lot of different cities where they
14 have sales offices?

15 A. That would be basically stores, outlets,
16 yes.

17 Q. Okay. And then you have below that -- let
18 me first ask you where we're talking about the sales
19 branches here, we didn't go into much specifics
20 earlier, but Kelly-Moore, as I understand, you have
21 corporate headquarters in several different states,
22 where your offices are like Hurst, Texas, correct?

23 A. Well, your corporate headquarters would
24 only be -- there is only one corporate office and
25 that is San Carlos, California.

1 Q. Okay. That's the main headquarters?

2 A. That's the main headquarters.

3 Q. And then in Texas where is the main
4 facility? Is it here in Hurst?

5 A. It would be Hurst, yes.

6 Q. Do they have any, what you would describe,
7 corporate activities at the Hurst facility? I
8 mean, you're the manager, president of the Southwest
9 Division and your offices are there, correct?

10 A. That is correct.

11 Q. Okay. To some degree it's a corporate
12 office?

13 A. If you want to define it that way, yes, I
14 guess -- I guess you can look at it that way.

15 Q. It is just not the main headquarters for
16 the company?

17 A. That is correct.

18 Q. Okay. With respect to Texas, is the Hurst
19 facility the main facility?

20 A. That would be correct.

21 Q. Both from a manufacturing standpoint, as
22 well as where the decision makers for the company
23 are?

24 A. We're decentralized to the point that we
25 -- we have programs and things that are applicable

1 to Texas, and the Southwest Division, which might be
2 different than the -- the other division.

3 Q. Okay.

4 A. If that's what you're talking about.

5 Q. Yes, sir. With respect to the Southwest
6 Division, is -- I was presuming that you being the
7 president of the Southwest Division, and officing in
8 Hurst, that Hurst was kind of the hub for the
9 Southwest Division?

10 A. That's correct.

11 Q. Okay. The states that you also oversee,
12 do they each all -- do each of those states also
13 have a corporate office?

14 A. They have what we call a district office.

15 Q. Okay.

16 A. And --

17 Q. Does each state have one district office?

18 A. No. Huh-uh. Not each state. We have
19 district offices that are set geographically like --
20 as an example, we have a district office in
21 Colorado, Fort Collins, Colorado. That district
22 office, those people in there manage the Colorado
23 stores as well as the Oklahoma.

24 Q. Okay.

25 A. Majority of the Oklahoma stores.

1 Q. So you may not have a district office in
 2 every state if --
 3 A. We do not.
 4 Q. -- if it's close enough to where
 5 geographically you could handle two states, you do
 6 so?
 7 A. Right.
 8 Q. Are there states where you have more than
 9 one district office?
 10 A. In Texas, in Hurst, in the Hurst building,
 11 we have two district offices that both serve the
 12 Metroplex here. We have the district office that
 13 serves the Dallas area, and we have a district
 14 office that serves the Fort Worth area.
 15 Q. Okay. Any other district offices in
 16 Texas?
 17 A. We have one in Abilene. We have one in
 18 Houston. That's it.
 19 Q. Okay. And does each district office
 20 oversee the local retail outlets?
 21 A. They oversee the local stores, that's
 22 correct.
 23 Q. Okay. And generally speaking, how many
 24 local stores does each district have
 25 responsibilities for? I am sure it varies some.

1 explained when we go through the rest of this chart.
 2 Q. (By Mr. Coon) We next have the bottom, it
 3 talks about sales branches. Are the sales branches
 4 different than the district divisions?
 5 A. Yes. Now, we call them stores today.
 6 Okay? I -- and, again, this -- and I was trying to
 7 see the date that this was printed.
 8 Q. Sure.
 9 A. Usually on a piece of literature like
 10 this, the date is usually on the last page in the
 11 back, and I don't see that it's aligned. I don't see
 12 it.
 13 But, here, back -- in those days, they called
 14 -- I believe they called the stores sales branches,
 15 and if you notice, they have got this broken down in
 16 Texas division, and then listing the sales branches
 17 which are really the stores.
 18 Q. Okay.
 19 A. And the same thing under California and
 20 Nevada. They're really the stores that are within
 21 that basic area.
 22 Q. Fair enough. And if we looked at the
 23 front of this, some of the literature, it appears
 24 when you give the history, they are talking about up
 25 through the early '60s, so I am -- or I think it's

1 A. Yeah, basically -- it's around 13 to 15
 2 per district.
 3 Q. So, the basic hierarchy, as I understand,
 4 you have got the main headquarters in California,
 5 and then your second to that headquarters here in
 6 Hurst, where your offices are?
 7 A. (Indicating.)
 8 Q. And then you have five or so other
 9 division district offices?
 10 A. District. They would be called district.
 11 Q. Okay. And then below those, you have
 12 multiple little retail shops that answer to each of
 13 those districts?
 14 A. That's correct.
 15 Q. Okay. Are there any other parts of that
 16 hierarchy that we missed? Are there lateral
 17 hierarchies, or anything that we missed?
 18 A. As it relates from Hurst on down to the
 19 stores, no, that would be basically the flow.
 20 Q. Okay.
 21 MR. HAZEN: And, Brent, just a point
 22 of verification. You're talking today, right, with
 23 respect to the hierarchy?
 24 MR. COON: Sure. Sure. And I think
 25 there are some differences here that will be

1 early '70s, so I am presuming that was the time
 2 frame involved here. But, again, I didn't see any
 3 dates. So, if there is differences between the way
 4 the chart or this brochure lays out the corporation
 5 as it existed then from now, you can clarify those
 6 with us.
 7 A. Sure. Be very happy to.
 8 Q. In going through this there was some basic
 9 structural information, showed -- this again is
 10 kind of a corporate hierarchy, if we look at the
 11 charts, shows the president and then management
 12 committees. And I want to ask you here, it shows
 13 the division under the president of an industrial
 14 minerals division. Is this where you were talking
 15 about they made the mining?
 16 A. The mining, yes, sir.
 17 Q. And then over here we have the Paco
 18 textures?
 19 A. That would be Paco.
 20 Q. Paco?
 21 A. They call it Paco. Goes by Paco, yes.
 22 Q. Okay. And then underneath it we have
 23 Cal-Pacific Trucklines, Management Data Services,
 24 and Drywall Tape Company?
 25 A. Correct.

1 Q. Were those all entities that operated
2 under the -- the Paco umbrella, or --

3 A. No. They -- they would have been -- Paco
4 would have been a subsidiary, Paco manufactured
5 drywall equipment.

6 Q. Okay.

7 A. Or not equipment, but the -- the patching
8 compounds. Cal-Pacific was another subsidiary. All
9 these are individual subsidiaries. As you asked me
10 earlier, who were these people up here under this
11 breakdown, where it was talking about subsidiaries.
12 Okay?

13 Q. Okay.

14 A. Cal-Pacific, we owned the truck --
15 Kelly-Moore owned a truckline at one time.

16 Q. Okay. When and where did they own a truck
17 line? We talking about a -- like Allied Trucklines,
18 that kind of a truckline?

19 A. We owned our own trucks for transporting
20 of material to our stores from the factories.

21 Q. Okay. So instead of hiring an outside
22 company to transport your product from the
23 manufacturing facility to your retail stores,
24 you-all had your own trucking company to do so?

25 A. That is correct.

1 -- we -- when we went into the Paco business, they
2 also bought a -- a tape company as well as a metal
3 company, and the tape company, I believe, is the one
4 that -- originally where you buy the -- the tape
5 that goes on the wall.

6 Q. Okay. Is this the rolls of the --

7 A. Yes.

8 Q. -- sheet tape --

9 A. Yes, sir.

10 Q. -- that you use to float between the
11 sheetrock and fill in the cracks?

12 A. Yes, sir.

13 Q. Okay. Do you know where that was located
14 at?

15 A. I believe it was in the East Bay. I want
16 to say Hayward, but I am not sure that's correct. I
17 know the -- the metal company was located in
18 Hayward, so I may be confusing it. So --

19 Q. Okay.

20 A. I really can't say.

21 Q. If we compare that list with what Mr.
22 Merrill had signed on this document, which is 1003,
23 he talks about the Paco Textures Corporation was
24 founded in '58, and was located in Richmond,
25 California. Does that sound consistent with your

1 Q. Did they do any distribution for any
2 companies other than for Kelly-Moore?

3 A. No, sir.

4 Q. Okay.

5 A. To the best of my knowledge, it was
6 strictly in-house.

7 Q. Okay. Made sense to them to just
8 internalize that part of it, probably because of a
9 bottom line expense cost?

10 A. I don't know for what reason they had, but
11 that would sound logical.

12 Q. Okay. You also had the Management Data
13 Services?

14 A. Yeah. From -- and, again, I am very vague
15 on this one. This was a -- a subsidiary at one time
16 that made accounting-type equipment. I guess they
17 were getting -- it goes back in the days when they
18 were getting automated as far as accounting-type
19 things, and this was an accounting service.

20 Q. Okay. Do you know what happened to --
21 well, first let's go to the last one there, the
22 Drywall Tape Company.

23 A. Correct.

24 Q. Do you know anything about that company?

25 A. I believe that was the company that made

1 memory?

2 A. That is correct.

3 Q. And that it manufactured drywall, joint
4 compounds and wall textures, and sold to
5 distributors, principally in Northern California, of
6 which Kelly-Moore was the largest distributor, does
7 that sound correct?

8 A. That is correct.

9 Q. Okay. Now I want to ask you the next
10 thing there, which is distributorships. When
11 Kelly-Moore has their product lines, did they also
12 have outside distributors that would carry their
13 product lines under some other name to other
14 facilities?

15 MR. HAZEN: Objection, form.

16 A. Are you talking about paint?

17 Q. (By Mr. Coon) Yeah. I guess that's a
18 good question. Let's first talk about paints. Did
19 they have agreements to have anyone else distribute
20 their products to facilities other than Kelly-Moore
21 facilities?

22 A. Oh, okay. All right.

23 MR. HAZEN: Objection, form.

24 Q. (By Mr. Coon) Does that make sense?

25 A. Yes, sir.

1 Q. Okay.

2 A. It does.

3 Q. And the answer?

4 A. The philosophy of the company from day
5 one, and we even have that philosophy today, is that
6 the company markets to its own stores. We have not
7 been in the distributor business or the dealer
8 business or whatever, so the philosophy has always
9 been sell through your own stores.

10 If I understand your question, you wanted to --
11 your one question was did we ever repackage any of
12 our products for resale outside of the organization.

13 Q. Yes, sir.

14 A. I am not aware that we ever did that with
15 paint. I am aware that there was a rebranding
16 agreement between Kelly-Moore Paint Company and
17 Georgia Pacific that goes back to '68, and I think
18 that ended in '71. But other than that, I am not
19 aware of anything else where we would have rebranded
20 or relabeled products for somebody else.

21 Q. Okay. Do you know what products would
22 have been involved in that rebranding agreement with
23 Georgia Pacific?

24 A. There were about four or five products. I
25 -- I'd have to go back to the file. I don't recall

1 A. As far as an agreement between --

2 Q. Kelly-Moore and Georgia Pacific.

3 A. I have seen a copy of that, yes.

4 Q. Okay. Do you know whether or not the
5 reverse was true, that other persons like Georgia
6 Pacific made products, rebranded them under the
7 Kelly-Moore name?

8 A. To the best of my knowledge, no, because
9 Mr. Moore has always been very -- give you a little
10 bit of background here. He's always been very,
11 very, very protective of the Kelly-Moore name and
12 the integrity of the company, and he didn't --
13 anything that our name went on, he wanted to make
14 sure it was made a right way, a certain way, and the
15 quality. So I have never seen anything -- until
16 recently they started to rebrand some sundry items.
17 But that there was never anything in the
18 organization where there was any rebranding of paint
19 or anything like that.

20 Q. Okay. And what do you mean by the
21 rebranding of some sundry items?

22 A. Roller covers is an example. Roller
23 covers, there might be some out in the stores now
24 that have Kelly-Moore name on the wrapper, but it's
25 a cover that we buy from somebody else.

1 exactly but it was -- it was a -- a fairly limited
2 line.

3 Q. Were they the joint compounds or textures?

4 A. They were joint compounds and textures,
5 yes, sir.

6 Q. And were those some of the
7 asbestos-containing products that the Paco Textures
8 had made at one time?

9 A. Yes, sir.

10 Q. Do you know which ones under the Paco
11 lines were the same ones that were rebranded for
12 Georgia Pacific?

13 A. I actually don't recall off the top of my
14 head. I would have to go back to my notes and take
15 a look at that, but I -- my assumption would be it
16 would have been the -- the better moving items, but
17 I can't tell you exactly which ones they are off the
18 top of my head.

19 Q. Okay. And just off the top of your head,
20 what were the better moving products?

21 A. Oh, the textures, and the Ready Mix Joint
22 Compound.

23 Q. Okay. Do you know whether or not there
24 still exist any copies of the rebranding agreements
25 that were in place in that '68 to '71 time frame?

1 Q. Okay. And what's a roller cover? Talking
2 about paint rollers?

3 A. Rollers -- yeah, I'm sorry, paint roller
4 cover you put on a handle and paint the walls.

5 Q. The replacement rollers for the trays?

6 A. Yes.

7 Q. Okay. Okay. The truckline company, is
8 that something that still is in the organization,
9 Cal-Pacific Trucklines?

10 A. That was dissolved a few years ago in
11 California, but we still own our truckline here in
12 -- in Hurst.

13 Q. Okay. The truckline in Hurst, is that
14 also a Cal-Pacific or is that another brand?

15 A. It's not called that, sir, but I -- I
16 can't tell you under what classification it goes by.

17 Q. Is that wholly owned by Kelly-Moore?

18 A. Yes, sir.

19 Q. Does it do any distribution of product
20 lines for any -- anyone other than Kelly-Moore?

21 A. No, sir.

22 Q. Okay. The Drywall Tape Company, is that
23 still in existence?

24 A. No. Not as Kelly-Moore.

25 Q. Do you know if they closed that facility

1 or sold it?
 2 A. I can't answer that.
 3 Q. Okay.
 4 A. I shouldn't say I can't answer. I don't
 5 know.
 6 Q. Don't know? Okay. If we go on through
 7 the brochure, it starts talking about setting up
 8 what they call a -- I am trying to remember the
 9 name. Retail -- it looked like little mini Home
 10 Depots?
 11 A. Home improvement.
 12 Q. Home improvement centers.
 13 A. Right.
 14 Q. When did Kelly-Moore get in the home
 15 improvement centers and do they still have any?
 16 A. We're no longer if that business. It goes
 17 back, I believe, to the early sixties. We acquired
 18 a couple large facilities, and made home improvement
 19 centers out of them, where they sold paint, and
 20 gardening, and that type of thing.
 21 Q. So they would have sold not only
 22 Kelly-Moore products there, but products from other
 23 vendors?
 24 A. The paint that was sold through those
 25 outlets was Kelly-Moore paint.

1 Q. Okay.
 2 A. The other products would have been
 3 numerous suppliers from other companies, yes.
 4 Q. Okay. And if this picture -- it's kind of
 5 grainy, but it looks like they're selling lamps, and
 6 lights, and flowers and all kind of stuff.
 7 A. Correct.
 8 Q. Okay. So this would be like just a
 9 smaller version of, I guess, a Home Depot or Lowe's
 10 or something today?
 11 A. Actually, I'd like to classify this as the
 12 beginning of Home Depot, because Mr. Moore had a --
 13 quite a vision with this thing, and -- this was the
 14 early days of the home improvement centers.
 15 Q. And did he sell out those home improvement
 16 lines or did they just close of their own accord?
 17 A. We just closed them down.
 18 Q. Was that an idea before its time?
 19 A. Actually it was -- worked very well, until
 20 the Home Depots and all those started to move into
 21 the market, then they made it real tough.
 22 Q. Okay. This next talks about clutches and
 23 brakes. Do you know anything about Kelly-Moore
 24 being involved in manufacturing, making or
 25 distributing brake or clutch lines?

1 A. Yeah. We bought a clutch company
 2 primarily because -- as I understand it, the
 3 clutches that were -- this company manufactured were
 4 clutches that we were able to use on some equipment,
 5 spray equipment, that we were also making.
 6 Q. Was that the Sprayline product line?
 7 A. Yes, sir.
 8 Q. Okay. We will talk about that in a
 9 minute.
 10 A. And so they bought this clutch company.
 11 Now, -- and I just learned something today. It was
 12 originally in Van Nuys, so that explains the Van
 13 Nuys subsidiary.
 14 Q. Okay.
 15 A. The clutch company was moved to Ontario.
 16 Q. Canada?
 17 A. No. Ontario, California.
 18 Q. Okay.
 19 A. So --
 20 Q. Was that still in operation --
 21 A. They started it then.
 22 Q. I'm sorry. Is that still in operation?
 23 A. No.
 24 Q. What happened to it?
 25 A. We sold it.

1 Q. Okay. Do you know what types of those --
 2 of clutches and brakes they made there? What they
 3 were used for?
 4 A. Primarily they were small clutches. I
 5 can't really tell you exactly, but they went on -- I
 6 think some of them went on golf carts, and some went
 7 on equipment, that type of thing.
 8 Q. Okay. Did they manufacture the components
 9 there at their facility? Was this the manufacturing
 10 facility?
 11 A. I think it was more of an assembly where
 12 you bought components from different people, you
 13 know, and then sort of like a car assembly line.
 14 Q. Okay.
 15 A. Put them all together.
 16 Q. A lot of cars and trucks during this time
 17 frame had asbestos clutches and brakes. Do you know
 18 whether or not this facility assembled
 19 asbestos-containing clutch pads or brake pads or
 20 anything of that nature?
 21 A. I can't answer that. I really can't, sir.
 22 Q. Do you know who would have been in charge
 23 of running that facility during the time it was
 24 open?
 25 A. I really don't. No. I can't tell -- help

1 you.

2 Q. Okay. Next we have the Chem-Guard
3 Products. Says it was founded in 1958. Makes wood
4 preservatives, canning and food packing industry.
5 Is that facility still open?

6 A. No.

7 Q. What happened to it?

8 A. Sold, probably, or closed down.

9 Q. Okay.

10 A. Have to understand early on in the
11 company's existence, we were involved with many
12 different types of businesses. It was around 1982
13 when it was decided that we'd concentrate on paint,
14 and so a lot of these things then started to go by
15 the wayside. And since then we have concentrated
16 solely on making paint. I can't tell you what
17 happened to that particular.

18 Q. Okay. Then we have Cal-Pacific
19 Trucklines. That's the one I believe you have just
20 described for us?

21 A. Yes.

22 Q. And it shows a fleet of vehicles there,
23 one of the pages of the brochure, and talks
24 generally about the trucking fleet and shows some of
25 the drums of cargo and stuff like that.

1 the basic industrial minerals, and that was one of
2 the providers of the ingredients to make the
3 ceramics you told us about earlier?

4 A. Yes. Yes.

5 Q. It says they also used oil well drilling
6 muds. Do you know anything about that line of the
7 Basic Industrial Minerals products?

8 A. I sure don't, sir.

9 Q. Okay.

10 A. Sure don't.

11 Q. A lot of drilling muds at times in the
12 past contained asbestos. Do you know whether or not
13 the drilling muds that Basic Industrial Minerals
14 prepared or manufactured contained asbestos?

15 A. Do not.

16 MR. HAZEN: Objection, form.

17 A. Do not.

18 Q. (By Mr. Coon) Okay. Next we have KM
19 Drywall Finishing Equipment. Was that a separate
20 product line? Was it another company?

21 A. This is where that equipment I talked to
22 you about with the clutches --

23 Q. Yes, sir.

24 A. -- went into the equipment.

25 Q. Uh-huh.

1 Okay. Next, what do we have here? Is this the
2 mining facility?

3 A. Yes. That's what it looks like.

4 Q. That's basic industrial minerals?

5 A. I can read that. I can't read the rest of
6 it.

7 Q. We're having to read it sideways off the
8 brochure.

9 A. Let me move over.

10 Q. You're fine. It talks about -- I think we
11 need to keep you square with the camera.

12 MR. HAZEN: Yeah, come back over.
13 You're going to get out of camera focus.

14 Q. (By Mr. Coon) -- diversifying into pottery
15 and ceramics industry with air floated clays as well
16 as oil well drilling muds. Read that correct?

17 A. Now I understand -- now I understand where
18 the ceramic people got some of their minerals for
19 the ceramic division.

20 Q. They internalized everything at
21 Kelly-Moore, didn't they?

22 A. Yeah.

23 Q. Okay.

24 A. Mr. Moore was pretty sharp.

25 Q. So in making the ceramics, you acquired

1 A. This is part of it. This was equipment
2 that they -- this particular case, manufactured
3 machines for the mixing of dry powder products with
4 water spraying them on.

5 Q. Okay.

6 A. Like to do with drywall.

7 Q. Now, what we have here under the
8 Kelly-Moore drywall finishing equipment, was that a
9 separate company, or is that just one of the product
10 lines that Kelly-Moore made under their same
11 corporate umbrella?

12 A. This was one of the subsidiaries.

13 Q. Okay.

14 A. This would have been the subsidiary, and I
15 noticed here it says Fresno, California, so that
16 would have been going back here to what you were
17 talking about --

18 Q. Okay.

19 A. -- when you asked me about the
20 subsidiaries.

21 Q. Sure. Was that what was called the
22 Sprayline Company?

23 A. Yes.

24 Q. Okay. And, so, you had this separate
25 company out there that would actually apply the

1 materials as well as sell the equipment, or just --
 2 A. No. We made --
 3 Q. Did you sell the equipment?
 4 A. We made the equipment. We didn't apply
 5 it.

6 Q. You-all were not applicators, you-all just
 7 sold the equipment to apply?

8 A. That's correct, to the best of my
 9 knowledge.

10 Q. This would have been equipment that you
 11 would have used to apply the textures? You could
 12 blow the textures on, and trowel it out, the
 13 spackles and stuff like that for the ceilings and
 14 the walls?

15 A. Correct.

16 Q. Would this have been something that would
 17 have been sold to contractors, or individual folks
 18 who wanted to try to do it -- do repair jobs, or
 19 renovation jobs on their homes or what?

20 MR. HAZEN: Objection, form.

21 A. I would not think that this type of
 22 equipment would go to the normal consumer. This
 23 type of equipment would have to be handled by a
 24 professional, who you -- you know, works with --
 25 that's -- that's his or her livelihood on a daily

1 subsidiary here --

2 Q. Okay.

3 A. -- where it says the tape company.

4 Q. Sure.

5 A. This is the rolls of tape --

6 Q. Okay.

7 A. -- in the process.

8 Q. This is a grainy picture, but this
 9 actually shows us, and this is stamped KM BB 5696.
 10 I don't see the actual page on here.

11 A. Yeah.

12 Q. But it shows, I guess, a lot of rolls of
 13 flat tape.

14 A. Yeah, if it hadn't been for this, I would
 15 have thought it would have been rolls of cheese.

16 Q. Yeah.

17 A. It says, "Electronic process spark punches
 18 tiny holes in the tape."

19 Q. Okay.

20 A. So that would be the tape process.

21 Q. These were the tapes that were used to
 22 float the sheetrock out?

23 A. Yes, sir.

24 Q. Did Kelly-Moore have for the heavy
 25 industrial users or large commercial users a -- a

1 basis. I would --

2 Q. (By Mr. Coon) So it would have been
 3 drywall contractors principally?

4 A. Yes.

5 Q. Okay. I assume large and small
 6 contractors?

7 A. I would say so, yes.

8 Q. Do you know whether or not that type of
 9 equipment was ever available for lease at any of
 10 your retail shops, that someone went in and bought
 11 your texture to -- to do their house, they could
 12 rent the equipment from you there to apply it
 13 themselves?

14 A. I can't say that that ever -- that did or
 15 did not happen. I do not recall. Knowing the
 16 company's philosophy about renting equipment, up
 17 until recently, I would -- my guess would be no. My
 18 guess would be no.

19 Q. Okay.

20 A. But I can't swear to it, sir.

21 Q. Okay. Next we have Kelly-Moore and The
 22 Drywall Industry, and wanted to talk about there --
 23 it shows some stacks of something. The photo is not
 24 particularly good?

25 A. Oh, this is the tape. We go back to the

1 wholesale distribution system that bypassed the
 2 retail shops?

3 A. Let me make sure I understand your
 4 question. Are you asking did we distribute product
 5 other than through our own stores?

6 Q. Yes, sir. Directly to end users.

7 A. No.

8 Q. Okay. Say, I am a -- hypothetically, I am
 9 a drywall contractor in Houston, Texas.

10 A. Okay.

11 Q. I do a lot of drywall business and I want
 12 to get a better deal. Could I call Kelly-Moore and
 13 say, I want to do big volumes of business with you
 14 guys, but I want you-all to cut me a deal and ship
 15 it straight to me? Do you-all ever do anything like
 16 that?

17 A. No.

18 Q. Could you have the commercial users that
 19 would buy in volume go to a retail store and get
 20 more, what you would call, a wholesale or discount
 21 price, volume pricing?

22 A. Everything went through the stores.

23 Q. But could you get volume pricing if you
 24 were a large customer?

25 A. Oh, yes.

1 Q. Okay. So, each of the retail shops you
2 have told us about could have different pricing
3 schedules dependent upon the individual customer
4 issues?

5 A. That is correct.

6 Q. Were those all fixed prices that were set
7 in criteria by upper management, or were the
8 individual retail stores allowed to negotiate the
9 various rates based on the volume of the demand?

10 A. I can only tell you what I know since I
11 have been the company. The price schedules are
12 preprinted, and they're set, and you have to work
13 off of those schedules.

14 Q. So you can have a -- your regular retail
15 if somebody wants to come in and just buy one gallon
16 of paint or one bucket of this or that, you have got
17 the retail price; and if a guy wants to come in and
18 buy a thousand gallons of paint because he's a
19 commercial painter, or a commercial drywall, he
20 can get a fixed --

21 A. He would get a different schedule.

22 Q. Get a different scheduled price?

23 A. Right. That's correct.

24 Q. Okay. Is that pretty much how
25 Sherwin-Williams operates as well?

1 departments, something like that?

2 A. We have a quality control department.

3 Q. Where was quality control at?

4 MR. HAZEN: Objection, form.

5 A. I --

6 Q. (By Mr. Coon) They have more --

7 A. I need to understand what you mean by
8 quality control. We may be talking about two
9 different things.

10 Q. We may be. You tell me what kind of
11 quality control place you-all had.

12 A. Okay. Every plant has a quality control
13 lab, so that when they make a batch of paint, and I
14 am going to have to use paint because that's
15 basically what we look at today.

16 Q. All right.

17 A. Every batch, some of that is taken out of
18 the batch, taken back to the lab and evaluated to
19 make sure it was made according to specification.
20 It's brushed out. It goes into a various ovens,
21 that type of thing.

22 Once that's done, once the quality control lab
23 releases the product, then that batch can be filled.
24 It's put in cans, and then put in the warehouse.

25 Q. Okay. With respect to a facility like the

1 A. They used to. I can't tell you how they
2 operate today, sir.

3 Q. Okay. This photo talks about Kelly-Moore
4 paint company and it said Trilite Corporation. Do
5 you know what the Trilite Corporation was?

6 A. Yeah, that's in Houston. It was in
7 Houston. They made aggregate for texture paints.
8 It was perlite, vermiculite that type of thing.

9 Q. Okay. Vermiculite, where did the
10 vermiculite come from?

11 A. Africa.

12 Q. Do you know whether or not the vermiculite
13 had asbestos in it?

14 A. I can't answer that. I would -- I know
15 that vermiculite that they were buying at the time
16 came from Africa, but I can't tell you what the
17 composition of it was.

18 Q. Okay. Did -- did Kelly-Moore have anybody
19 that was in a -- a lab, I guess, in a lab position,
20 where they would actually analyze the products that
21 they were buying, the raw ingredients to meet
22 specifications, to determine whether or not there
23 were contaminants, things like that?

24 MR. HAZEN: Objection, form.

25 Q. (By Mr. Coon) Quality control

1 Trilite Corporation here, would there have been a
2 quality control at that facility for the raw
3 ingredients that were coming in, vermiculite and
4 aggregate?

5 A. They would had to have some kind of a
6 quality control before they resold it to somebody,
7 to make sure that it met certain specifications.

8 Q. Okay.

9 A. How it works when the stuff comes in?

10 Q. Yes, sir.

11 A. We rely on the manufacturer of the
12 material to supply to us all the data relevant to
13 that raw material, so that's the information we use
14 to basically determine what kind of product it is.

15 Q. Okay. Do you know what years vermiculite
16 was ordered for this particular facility?

17 A. I was afraid you were going to ask me
18 that. I have to go back to my notes. I am going to
19 have to -- I really don't recall. It would had to
20 have been in the sixties, but I really can't give
21 you an exact year, sir.

22 Q. Was this Houston facility where they
23 actually manufactured that product?

24 A. No, they brought it in and then did a
25 processing of the product somehow to get it in the

1 form that they could repackage it and then resell
2 it.

3 Q. Okay. I am not quite getting the picture.
4 We got the Houston facility. It's called the
5 Kelly-Moore Paint Company, Trilite Corporation, and
6 is Trilite a subsidiary of Kelly-Moore, or is that
7 just a combined name they have just on that
8 manufacturing facility or what?

9 A. Well, Trilite was a company that they
10 purchased down there. Why they put Kelly-Moore
11 paint company name on it is -- is beyond me. It was
12 Trilite. That's all they handled was the
13 vermiculite and the perlite that went into texture
14 coatings.

15 Q. Okay. And I -- maybe I don't have a good
16 understanding of what that company actually did. Did
17 they actually sell a paint that had vermiculite in
18 it at that facility?

19 A. No.

20 Q. Is that what they made?

21 A. No. They sold the vermiculite and the
22 perlite to the company itself for use in drywall
23 products, as well as other companies were buying it
24 to put into their products.

25 Q. Okay. So this was a facility that not

1 acquiring that same vermiculite after it had been
2 processed at this Trilite Corporation in Houston?

3 A. I can't answer that. I don't know who
4 else bought it from us.

5 Q. How would we go about finding out who the
6 other customers of that facility would have been?

7 MR. HAZEN: Objection, form.

8 Q. (By Mr. Coon) Are there -- do you know if
9 there were records that are kept? Let me back up.
10 Is the store still there?

11 A. No. It wasn't never a store. I don't know
12 why -- as I say, I don't know why the name
13 Kelly-Moore Paint Company is on it, because, to the
14 best of my knowledge, it was never a store.

15 Q. So they did not sell out of that facility,
16 it was distributed elsewhere?

17 A. Did not sell paint out of that facility.
18 Did sell, resell the vermiculite and the perlite out
19 of that facility.

20 Q. Could you have walked into that facility
21 in Houston and bought a bag of vermiculite that had
22 been processed at that plant?

23 MR. HAZEN: Objection, form.

24 A. Could I as a consumer?

25 Q. (By Mr. Coon) Yes, sir.

1 only bought the raw ingredients, say the vermiculite
2 from where? Africa?

3 A. Vermiculite came from Africa.

4 Q. Okay. So they would buy the vermiculite
5 from Africa. It would come into this Trilite
6 Corporation facility in Houston, and once there it
7 would go somewhere else within Kelly-Moore for use
8 in their products?

9 A. Yeah. It would be washed or whatever and
10 then put in a content that would go into the
11 Kelly-Moore products, or it could be sold to a --
12 another person who was using --

13 Q. Okay.

14 A. -- making similar products.

15 Q. First of all, what product lines do you
16 believe Kelly-Moore was making during this time
17 frame where you would have had vermiculite as one of
18 the ingredients?

19 A. It would have had to have been the texture
20 products.

21 Q. Okay. The Paco lines?

22 A. Yes, sir.

23 Q. Okay. And what other companies outside of
24 the Kelly-Moore Corporation, or structure, or
25 family, however you want to call it, would have been

1 A. I -- I doubt it.

2 Q. Okay. You believe they sold mostly to
3 other manufacturers?

4 A. Yes, sir.

5 Q. So we don't -- you don't -- you did not
6 anticipate or did not -- you're not aware of
7 customer -- end user customers going in and buying
8 the -- the product there at the factory?

9 A. Anything is possible, but I mean that --
10 that stuff is processed in bulk, you know --

11 Q. Okay.

12 A. -- in big bags, and I mean for the average
13 person that would walk in off the street, you know.

14 Q. Wouldn't typically have a need for it?

15 A. Huh-uh.

16 Q. Unless they were in the business of taking
17 it and using it in larger fashion, like Kelly-Moore?

18 A. My guesses are it was strictly in bulk to
19 -- to other end users.

20 Q. When this vermiculite was processed at
21 this particular facility, do you know how it was
22 that it got to the Paco facilities where it was
23 actually made, blended into the textures? I mean
24 was it bagged up there and then shipped on one of
25 the Cal-Pacific Trucklines, or --

1 A. Well, Cal-Pacific was a truckline in
2 California only.
3 Q. Okay.
4 A. Okay. This was in Texas.
5 Q. You're talking about a Houston truckline?
6 A. Yeah, we have a truckline out of Hurst.
7 At that time -- it would be speculation. It could
8 have come --
9 Q. All right.
10 A. -- either with a truck going down there
11 and picking it up, or it could have been shipped by
12 common carrier from there to -- to one of the
13 facilities.
14 Q. Okay. Do you know what happened to that
15 facility?
16 A. No. I do not.
17 Q. Is the building still there? Do you know
18 if they sold the building or kept the building?
19 A. I have no idea.
20 Q. Or the building is torn down? Do you know
21 where the street location of that facility was?
22 A. I -- oh, I have heard it. It's on the
23 south end of Houston. That's all I know. I may --
24 I could find that, but I don't know it off the top
25 of my head.

1 Q. Okay. Do you know if the actual facility
2 and the land there is still there?
3 A. I would assume the land is. I can't tell
4 you about the facility.
5 Q. Let's hope the land is still there anyway.
6 A. Yeah.
7 Q. But -- but I am just saying the integrity
8 of the complex, the original property, whatever
9 vacant land was there and the building, if that's
10 all still there? If it's all been torn down,
11 something has been built on top of it?
12 A. I can't answer that.
13 Q. Okay.
14 A. I can't answer that.
15 Q. So you don't know if you could go down
16 there and see anything that looks anything like the
17 photo there now?
18 A. No, I could not.
19 Q. Okay. Who would know more about that at
20 Kelly-Moore now?
21 MR. HAZEN: Objection, form.
22 A. I really don't know. The --
23 Q. (By Mr. Coon) Were the --
24 A. Some of the ex-employees, the old timers
25 may, but that goes back quite awhile.

1 Q. Where would the Kelly-Moore records be
2 kept now that would have reflected who the
3 management people were at that facility while it was
4 open, as well as any of the other records that were
5 kept at that facility regarding their sales and
6 distribution of the product during the time it was
7 open?
8 MR. HAZEN: Objection, form.
9 A. The repository in San Carlos, there was
10 about 88 boxes there of different information that
11 was all accumulated relevant to asbestos. I have --
12 and I have gone through those, but I don't remember
13 seeing anything in there that addressed it,
14 addressed Trilite individually. Maybe there could
15 be something in those boxes that I missed. Other
16 than that, I have no idea where the material --
17 where the information could be.
18 Q. (By Mr. Coon) Do you know why it was that
19 there was a decision made for Kelly-Moore to import
20 the vermiculite and wash it, or do whatever you were
21 describing, processing there, to use it in its
22 ingredients as opposed to buying it from vendors as
23 had been done at some point in time?
24 A. My understanding of the reason of buying
25 it from Africa at the time was that it was the

1 better quality, and it was a prime source not only
2 for Kelly-Moore to get it there, but other companies
3 as well, and that's my understanding of why it was
4 Africa.
5 Q. Do you know how it was shipped to this
6 facility? Was it in cargo containers off of ships,
7 or --
8 A. That would be an assumption. I can't
9 answer that, sir.
10 Q. Any idea of the type of volume of raw
11 material that went through the facility year to
12 year?
13 A. I have not researched that.
14 Q. Do you know what years that facility was
15 open doing the vermiculite process you have
16 described?
17 A. I wanted to say early sixties, but again,
18 I'd have to go back and research the dates. That
19 was a short -- from my recollection, that was a
20 short-term operation.
21 Q. Okay.
22 A. So --
23 Q. Did the -- when this facility closed,
24 where did the vermiculite come from that was still
25 being used in the product lines?

1 MR. HAZEN: Objection.

2 Q. (By Mr. Coon) Or was vermiculite still
3 being used in the product lines?

4 MR. HAZEN: Objection, form.

5 A. This facility was sold. The business was
6 sold to someone in Arkansas, Pine Bluff, I believe,
7 somewhere like that. And the business was sold to
8 them, and then we -- the company in turn was then
9 buying, I believe, from them.

10 Q. (By Mr. Coon) Okay. So you-all sold this
11 facility to someone else. They continued to do the
12 same thing that Kelly-Moore had done while they
13 owned it and you-all continued to buy the same
14 product from them?

15 A. We didn't sell them the facility. We sold
16 them the business rights to the material.

17 Q. Okay.

18 A. And I think everything was transferred to
19 Arkansas.

20 Q. And you-all kept the building and just
21 leased it back, leased the premises to them?

22 A. I have no idea, sir.

23 Q. Okay.

24 A. No idea.

25 Q. Again, anybody that you know of that would

1 Q. The vermiculite that was used from this
2 facility, you understood it to have gone into the
3 Paco lines, the textures, joint compounds?

4 A. I believe some of that material went into
5 the Paco lines, that is correct.

6 Q. Okay. And we also understand that
7 asbestos was used at some point in time in those
8 product lines?

9 A. Asbestos was an ingredient in the Paco
10 products, yes, sir.

11 Q. Okay. Do you know if under the
12 specifications they were using both the vermiculite
13 from this facility, as well as asbestos from other
14 facilities, in their texture and joint compounds at
15 the same time?

16 A. I can't answer that.

17 Q. Okay. Do you know if the asbestos became
18 a replacement or substitute for the vermiculite in
19 the products at some point?

20 A. It couldn't have. Asbestos and the
21 vermiculite are two different types of elements that
22 you're dealing with. Asbestos is a very thin fiber.
23 The vermiculite would have been puffy little things
24 that you put in to give it texture, a roughness.

25 Q. Okay. Do you know how long it was that

1 be more familiar with that business transaction?

2 A. Off the top of my head, it would be -- I
3 -- whatever I tell you would be an assumption and I
4 would rather not do that.

5 Q. Okay.

6 A. But it goes back 40 some years, so --

7 Q. Okay. Yeah, we're talking about something
8 that transpired in the sixties, correct?

9 A. Yeah.

10 Q. Who was the head of -- who had your title
11 at Kelly-Moore in the sixties, that would have been
12 likely to have overseen some aspects of those
13 operations?

14 A. You talking about president?

15 Q. Yes, sir.

16 A. Of this division? Well, we never had one
17 before. I was the first. So I don't know how they
18 would have been managed. When we go back to the
19 chart, it's been helpful. It's not even on here,
20 but I would assume, it looks like it was -- whoever
21 it was running it reported directly to the president
22 at the time, which would have been Mr. Moore. So I
23 can't answer your question.

24 Q. Okay.

25 A. Wish I could. I can't.

1 the vermiculite from that facility that we have been
2 talking about was used in the Paco product lines?

3 A. No. Again, I'd have to go back to the
4 dates, and, again, I have no idea at what time this
5 thing totally shut down, or how long it was in
6 business. I just can't answer that, sir.

7 Q. Okay.

8 MR. HAZEN: Hey, Brent, we're at
9 noon, so if you're at a stopping point, maybe we can
10 pick up and finish up with the brochure after lunch.

11 MR. COON: Sure. That's fine.

12 MR. HAZEN: Good.

13 THE VIDEOGRAPHER: Going off the
14 record at 11:56.

15 (A lunch recess was taken.)

16 THE VIDEOGRAPHER: Back on the
17 record. The time is 1:02.

18 Q. (By Mr. Coon) Mr. Giffins, when we left
19 off at the break, we were looking through the
20 brochure. I think page 5698 Bates stamp. I wanted
21 to ask you a few additional questions regarding the
22 -- we talked about the Trilite plant. The next one
23 under here talks about the joint cement production
24 of Kelly-Moore in the Dallas factory. Could you
25 tell us about that facility, please, sir?

1 A. My -- my involvement with the Dallas -- my
2 knowledge of the Dallas factory would only have been
3 that it was originally Hanna. They obviously were
4 making some joint compound which I was not aware of.
5 But the -- that was the factory that was basically,
6 I think, separate from Hurst, and then we opened
7 Hurst in 1970.

8 Q. Was that located on the -- generally the
9 same premises as your Hurst facility?

10 A. No, that would have been here in Dallas.

11 Q. Okay. And you had thought before that was
12 principally a paint manufacturer that you had
13 acquired, the Hanna facility?

14 A. Yes, sir.

15 Q. But in -- in reviewing -- I'm trying to
16 find out, did reviewing this literature make you
17 aware that they also made textures, or did you
18 already know that and just had not remembered it?

19 A. Somehow I missed this. I thought the
20 Hanna deal was strictly Hanna Paint Company, and
21 that the -- if any joint compounds were made, it
22 would have been made in that factory when we bought
23 them, before moving into the Hurst in '70.

24 Q. Okay. And when was that -- Hanna
25 acquired? Was that '63?

1 Q. Okay. I take it you still don't have any
2 personal knowledge with respect to whether or not
3 the Hanna facility made the same joint cements
4 before Kelly-Moore acquired them?

5 A. I do not, sir.

6 Q. Okay. Do you know how long that facility
7 had been in operation prior to the time Kelly-Moore
8 acquired it in '63?

9 A. I do not.

10 Q. Do you know who the ownership was at the
11 time of acquisition?

12 A. I do not.

13 Q. Would there be archived records with
14 respect to the identity of the personnel from that
15 facility?

16 A. Well, there has obviously got to be some
17 paperwork somewhere, or it's since disappeared, you
18 know, or gone. But I can't answer that. I don't --

19 Q. If -- I take it you -- do you know whether
20 or not the -- the texture materials that were made
21 there would have been the same type of basic
22 composition as the Paco lines?

23 A. What do you mean, same composition?

24 Q. Same ingredients.

25 A. Well, if there -- first of all, if there

1 A. I think it was '63.

2 Q. So, if the facility was acquired in '63,
3 it's apparent from this brochure that they made
4 joint compounds at the Dallas facility, and I am
5 trying to find out if you know if it was something
6 they were already making when you bought the plant,
7 or if it was something that Kelly-Moore continued to
8 make at that plant after they acquired it in '63?

9 A. I do not know.

10 Q. Okay.

11 A. I do not know.

12 Q. Do you know whether or not they made any
13 of the Paco lines there post '63?

14 A. Well, it says joint cement production, so
15 I'm -- I am assuming that probably they would have.

16 Q. Would there be any other records from that
17 facility that were retained in a repository or
18 something for Kelly-Moore to go back and look to see
19 what -- exactly what type of joint compounds, or
20 joint cements, or texturing cements were made out at
21 that plant, and what the name of the products were?

22 A. Again, I think any records, like I
23 mentioned earlier, that would be available would be
24 part of the repository, the eighty some boxes that
25 are listed there.

1 were stuff made there prior to Paco, the products
2 were pretty similar. A lot of the competitive
3 products were fairly similar. So if the
4 composition, the basic composition may have been
5 similar, but how they were put together and the
6 amount of raw material might could have been
7 different from supplier to supplier.

8 Q. Do you know what type of trade name the
9 Hanna facility operated under? Do they have
10 different identifying trademarks --

11 A. My knowledge --

12 Q. -- for their products?

13 A. -- is that it was Hanna Paint Company and
14 that's how they identified their -- their material
15 as well.

16 Q. Was it just called Hanna paints?

17 A. Hanna, right.

18 Q. Do you know -- I take it you don't know if
19 they made the textures before Kelly-Moore bought it?

20 A. I can't answer that, sir.

21 Q. So you do not know if there was a Hanna
22 texturing compounds or joint compounds product line?

23 A. No, I do not.

24 Q. Do you know if the facility that was
25 acquired there was one that was a manufacturing

1 facility, where they actually manufactured the
2 product there?

3 A. When we bought Hanna, there was a plant,
4 because they were making their own paint.

5 Q. And what happened to that facility?

6 A. I have no idea.

7 Q. Do you know if it was sold, if there's
8 still manufacturing processing there, if the
9 building is still there?

10 A. I can't answer that. I am not even sure I
11 know where it is, but it was -- it was somewhere
12 here in Dallas.

13 Q. To your knowledge, were any joint
14 compounds or texturing compounds sold by Kelly-Moore
15 after the acquisition of Hanna under names other
16 than the Paco line?

17 A. At -- after the acquisition of Hanna?

18 Q. Yes, sir.

19 A. Sold where?

20 Q. Anywhere.

21 A. Well, we got into the business in '60.

22 Q. Right. With Paco?

23 A. So -- with Paco. So, yes, if -- I mean we
24 -- we would have sold Paco after -- we would have
25 been selling Paco at the time we bought Hanna.

1 Q. Sure. But do you know whether or not
2 there were other names on any of the joint
3 compounds, or texturing material sold by Kelly-Moore
4 other than the Paco line?

5 A. I do not know. I have not seen anything
6 directly that says that we did, but again, prior to
7 1960, before we got into that business, there was
8 material out there on the market. Now, whether, in
9 fact, Kelly-Moore was buying somebody else's
10 material, I don't know that; but prior to 1960,
11 before we got into it, it could have been.

12 Q. Well, that was another thing I wanted to
13 ask you a little more about later, with respect to
14 rebranding as it relates to texturing materials, but
15 since you brought it up, do you know whether or not
16 Kelly-Moore sold any of the products like joint
17 compounds and texture materials before '60, under
18 either their name, or under another vendor's name at
19 their stores?

20 A. I am not aware. The only one I -- only
21 one that I am aware of that was sold under a
22 different brand name was that Georgia Pacific that I
23 mentioned to you.

24 Q. If we thumb briefly through the rest of
25 the brochure, it's a pretty extensive brochure, but

1 if we go through some more pages of this real
2 quickly, it talks about diversifying, moving,
3 expanding geographically. Do you know about -- "The
4 Do-It-Yourself Trade." Here is a section on "The
5 Professional Side." Talks about some of the control
6 aspects, I think talks about their quality
7 control --

8 A. Yeah, this --

9 Q. I think it's talking about maybe dealing
10 with professional contractors here.

11 A. Uh-huh.

12 Q. Or have I missed it? Is that what this is
13 discussing?

14 A. No, it's primarily talking that the stores
15 are set up as a full service center for the painting
16 contractor.

17 Q. Okay. Real briefly on that subject
18 matter, you had a lot of retail stores where an
19 individual customer such as you or I could go in to
20 buy some paint or texturing compound, correct?

21 MR. HAZEN: Objection, form.

22 A. Well, stores are open for anybody to come
23 in and buy from us, sure.

24 Q. (By Mr. Coon) Sure. So, I could just
25 drive my car down -- say this is 1965, I could have

1 drove my car down to one of your local retail shops
2 and bought a gallon of paint, or a bucket, or a bag
3 of texturing compound?

4 A. You -- you could do that. You could do
5 that.

6 Q. Just as an individual customer?

7 A. The only difference is the paint is
8 packaged in a way that the individual customer could
9 have purchased it, and used it effectively. The
10 drywall material was packaged in large 25-pound
11 bags, which the normal consumer, retail, like you
12 and I, would not normally have purchased in that
13 quantity because they wouldn't have ever used that
14 much.

15 Q. Okay. What sizes of the Paco containers
16 were there with the different texturing compounds
17 and joint compounds?

18 MR. HAZEN: Objection, form.

19 A. There were bags, 25-pound bags, 50-pound
20 bags in the dries, and then the premix there were
21 what you might call gallon sizes, and there were
22 four gallon sizes as far as the quantities.

23 Q. (By Mr. Coon) Did the gallons come in a
24 can, or a plastic container?

25 A. The gallons came in, like, a

1 cardboard-type thing.

2 Q. Okay. Now, if we looked at the brochure,
3 apparently there was some degree of effort by
4 Kelly-Moore to sell to the contracting trades.

5 A. Big effort.

6 Q. All right. And that would have been small
7 contractors and big contractors, any contractors?

8 A. The company's philosophy has always been
9 directed toward the painting contractor. And any
10 retail business that we do is just what basically
11 would have happened just from the store being there,
12 but the emphasis was on the painting contractor.

13 Q. When they acquired the Paco lines, do you
14 know if there was any additional efforts to capture
15 a portion of the drywall contractor business?

16 A. From what I -- what I have read, and the
17 only way I can answer that, sir, is to tell you the
18 basis of why that type of business appealed to the
19 company at that time, is back in the sixties people
20 were -- a lot of painting contractors were also
21 doing drywall, and it seemed to be a natural tie-in
22 to have that available to our painting contractors,
23 since, again, we were primarily in the contractor
24 wholesale business, it seemed like a natural tie-in
25 to have joint compounds.

1 Q. So as I understand, at that time frame
2 most of the contractors or a large portion of the
3 contractors you dealt with in the painting sector
4 were also the same contractors that were putting the
5 sheetrock up, and taping it and floating it and then
6 painting it?

7 A. During those days, that's basically --
8 they did both, a lot of them did both.

9 Q. Okay. So it made sense to have the
10 texturing compound, the product lines there along
11 with the paint since you were already targeting the
12 painting contractors in various communities?

13 A. It's my understanding, yes.

14 Q. I think this -- this -- there are several
15 pages of discussion about contractors, and selling
16 to contractors, and -- okay. Then we have a couple
17 of photographs here that show the Paco textures, and
18 home improvement, and K-M paint lines. Is this at
19 the California facility?

20 A. Yes, it is.

21 Q. That's at San Carlos?

22 A. Yes.

23 Q. And it appears from the way these were
24 written on top of the buildings, that all of these
25 different facilities were all in the same compound?

1 A. That is correct.

2 Q. Was the San Carlos factory the main
3 production facility for the Paco texture lines for
4 the West Coast?

5 A. Yes, it was.

6 Q. Where were the other Paco manufacturing
7 facilities located?

8 MR. HAZEN: Objection, form.

9 A. What -- at what time frame are you talking
10 about?

11 Q. (By Mr. Coon) Okay. Well, let's go back
12 to -- first, let's just finish this brochure. I
13 don't think there is hardly anything else we need to
14 really discuss. It talks about sales. Okay. I
15 think that covers that basically.

16 Let's talk specifically, then, about the Paco
17 product line. Kelly-Moore acquired that facility in
18 what? Was it 1960?

19 A. That's correct.

20 Q. And it was acquisitioned out of a
21 previously operating facility?

22 A. It was acquisitioned from a gentleman by
23 the name of Cliff Woodland, yes, sir.

24 Q. And when Kelly-Moore bought out this
25 company, what were -- let me back up. What was the

1 name of the company you-all bought?

2 A. Paco.

3 Q. Okay. It was already named Paco?

4 A. That is correct.

5 Q. How long had Paco been in business?

6 A. Two years.

7 Q. So, they started in '58?

8 A. '58.

9 Q. And what were the product lines that they
10 manufactured?

11 A. At that time, they were primarily
12 manufacturing the dry joint compounds.

13 Q. And what was the market for the dry joint
14 compounds?

15 A. Market as --

16 Q. Intended use.

17 A. To seal the -- to cover, fill in the
18 joints of drywall, and make the drywall appear
19 smooth, so that you have a continuous wall.

20 Q. Part of the taping and floating
21 procedure --

22 A. Yes, sir.

23 Q. -- is that you're engaged with drywall or
24 sheetrock?

25 A. Yes.

1 Q. And, as I understood, the desire by
2 Kelly-Moore to acquire this facility was because of
3 this hand-in-hand philosophy of painting contractors
4 and drywall contractors?

5 A. It's my understanding that it was -- at
6 that time that was part of the reason for doing
7 that, yes.

8 Q. And at the time this facility was
9 acquired, where were their operating facilities and
10 manufacturing facilities located?

11 A. Whose? Kelly-Moore's or --

12 Q. Paco's.

13 A. Paco's? Paco's was in Richmond,
14 California.

15 Q. And was that their operating facility or
16 manufacturing or both?

17 A. That was both, to my understanding.

18 Q. Did they have any other facilities?

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

20 Q. Did they have a distribution system?

21 A. Not -- I -- I can't answer that, sir. I
22 don't know.

23 Q. After the facility was acquired in 1960,
24 what type of expansion took place within that
25 division?

1 A. I assume to provide better facilities.

2 Q. Was it a bigger facility or more
3 efficient, or better geographic location?

4 A. I wasn't -- I wasn't part of the -- around
5 at that time, so anything I tell you would be an
6 assumption.

7 Q. Okay. What happened to the facility in
8 Richmond?

9 A. I do not know.

10 Q. Was it still operating by some other
11 entity? Did somebody else buy it, continue to make
12 dry joint compound there?

13 A. To the best of my knowledge, no. All that
14 entire operation was moved into San Carlos.

15 Q. Do you know if they actually moved the
16 physical equipment from Richmond to San Carlos?

17 A. It's my understanding they did.

18 Q. So they just picked up the plant and moved
19 it to another location?

20 A. Correct.

21 Q. And was it your understanding that in
22 addition to moving the original equipment in
23 Richmond, that they also expanded on the facility to
24 make either more of the product or different
25 products?

1 MR. HAZEN: Objection, form.

2 A. Within the Paco division?

3 Q. (By Mr. Coon) Yes, sir.

4 A. I don't know if there was any expansion.
5 Maybe I am -- maybe I won't answer your -- your
6 question correctly, but when it was purchased in
7 '60, we continued to operate it at that location up
8 through '64; and that material, that drywall
9 material, is what went into Kelly-Moore stores in
10 that area that were serviced by --

11 Q. Okay.

12 A. -- that facility.

13 Q. Any idea of what type of volume of the dry
14 joint compound was produced each year, those four
15 years?

16 A. I can't answer that, sir.

17 Q. Do you know whether or not Kelly-Moore
18 retains any records that would reflect the volume of
19 manufacturing of those goods at that facility?

20 A. If there's records available, they would
21 be in that repository.

22 Q. And what happened in 1964?

23 A. The Richmond facility was located -- was
24 moved to San Carlos.

25 Q. And what was the reason for the move?

1 A. Well, they didn't make anymore products,
2 they just brought over what they were making.

3 Q. Okay.

4 A. I -- having never seen Richmond, I can't
5 tell you if it was an expansion or not, to be honest
6 with you.

7 Q. And how long did the San Carlos facility
8 continue to operate, from '64 until when?

9 A. As far as making Paco?

10 Q. Yes, sir.

11 A. The -- they -- we finished -- we ceased
12 making Paco in 1982. That was suspended --

13 Q. Okay. Now --

14 A. -- as a company.

15 Q. Now, when we're talking about Paco and
16 ceasing production in '82, are we talking about the
17 -- the Paco dry joint compound, or other product
18 lines that they also manufactured at later days?

19 A. When I talk about '82, that's when the
20 company decided to get out of the business, so
21 whatever products they were making at the time,
22 everything was discontinued.

23 Q. Okay.

24 A. During the earlier period from 1964 on,
25 there were some product lines that were added to the

1 Paco assortment; but in '82, everything was
2 eliminated.

3 Q. Okay. So as I understand that, from '60
4 to '64, the only product that was made at the
5 facility, which was then located in Richmond, was
6 called Paco dry joint compound?

7 A. To the best of my knowledge, it was the
8 joint compounds.

9 Q. Okay. And that was, I believe, an
10 asbestos-containing material, was it not?

11 A. That is correct.

12 Q. And then from '64 to '82, the facility
13 operated in its new location in San Carlos,
14 California?

15 A. Correct.

16 Q. And during that time frame, not only did
17 they continue to make the dry joint compound for
18 some period of time, but they also expanded into
19 some other product lines under the Paco name?

20 A. Correct.

21 Q. Okay. And then in 1982, they quit making
22 anything under the Paco name, or they shut down the
23 plant? What did they do?

24 A. We shut -- all the Paco operations were
25 shut down throughout the company.

1 Q. Okay. Did that shut down that whole
2 facility, or was the facility in 1982 making things
3 other than the Paco product lines?

4 A. Well, as the map indicates, that area was
5 also on the paint plant.

6 Q. Okay. So they expanded into Paco other
7 Paco product lines between '64 and '82, and also
8 other product lines other than Paco?

9 MR. HAZEN: Objection.

10 Q. (By Mr. Coon) Like paint?

11 MR. HAZEN: Objection, form.

12 A. I'm confused now.

13 Q. (By Mr. Coon) Okay. I am, too. From
14 '64 to '82, the San Carlos facility continued to
15 make Paco product lines of various sorts?

16 A. Yes, sir.

17 Q. Did they make anything at that facility
18 during those years other than the Paco product
19 lines?

20 A. In the actual building, where Paco was
21 located?

22 Q. Just the same facility. Not necessarily
23 in the same building. I don't know how many
24 buildings you have there.

25 A. We made paint.

1 Q. Okay. When did they start making paint
2 there?

3 A. We moved to that location in 1952 -- '56,
4 I believe.

5 Q. Okay.

6 A. Now, I -- don't hold me to it.

7 Q. Okay. So, I better understand, and you
8 probably said this earlier, but when the Richmond
9 plant closed in '64 and moved to San Carlos, they
10 moved to the same location where there was already
11 an existing Kelly-Moore paint facility?

12 A. Yes, sir.

13 Q. Okay. Now, I understand. So, you already
14 had paint there, and then you bring the texturing
15 in, in '64?

16 A. Correct.

17 Q. And then '82, you shut down the texturing,
18 or all the Paco lines, correct?

19 A. Correct.

20 Q. And you still have the paint product lines
21 that were there before '64 and after '82?

22 A. Correct.

23 Q. Okay. Anything else other than the paint
24 lines?

25 A. Anything -- where, at that facility?

1 Q. Yes, sir.

2 A. Well, one of the home improvement centers
3 was there.

4 Q. Okay. And what years was the home
5 improvement center there?

6 A. Oh, I think that particular one started
7 around mid '70s, and that was shut down in 19 --
8 around '87, '88.

9 Q. And would they have sold their Paco
10 product lines right there at their home facility?

11 A. I believe they would have, yes.

12 Q. And I take it their paints would be sold
13 there at the home improvement facility as well?

14 A. Yes, sir.

15 Q. Anything else other than the Paco lines;
16 the paint business, and the home improvement
17 facility that was there for a period of time in the
18 '70s and '80s?

19 A. Not to my knowledge.

20 Q. Okay. Let's next talk, then, more about
21 the Paco product lines.

22 Over the years, how many different Paco product
23 lines were made, if you know?

24 MR. HAZEN: Objection, form.

25 A. Over the years? Since when? From --

1 Q. (By Mr. Coon) From the time you first
2 acquired the Paco product lines in 1960 until the
3 present.

4 A. So it would be '60 through '82. I am just
5 trying to count them up in my head. I'd say there
6 was probably about maybe 15 or 16 different product
7 lines.

8 Q. Okay.

9 A. Now, when I -- I'm sorry, I got to clarify
10 that. I don't think there were that many different
11 product lines, because some of those products had
12 two different -- some of them came in dry, and some
13 of them came in wet, so there may have been a couple
14 -- a few products where you had both dry and wet,
15 and that's what I am calling the total of 16, but in
16 essence, it could have been only one type of
17 product.

18 Q. Okay. Let's -- let me show you what I
19 have. We have been provided with the boxes that you
20 told us you looked at earlier.

21 A. The six boxes that we gave you?

22 Q. Yes, sir. Yes, sir. We -- I have looked
23 at those, and some folks in my office have looked at
24 those, and we tried to go through and sort some
25 things out. Let me show you what we have. There

1 MR. COON: Yeah, that's fine.

2 MR. HAZEN: Let's just go off real
3 quick and just make sure.

4 THE VIDEOGRAPHER: Going off the
5 record at 1:26.

6 (A recess was taken.)

7 THE VIDEOGRAPHER: Going on the
8 record. The time is 1:39 p.m., May 31st, 2002.
9 Beginning of Tape 2.

10 Q. (By Mr. Coon) Okay. Mr. Giffins, we
11 have taken another brief break to go back and look
12 at some photographs and some additional charts that
13 you have in front of you. And I want to first go
14 back as a matter of housekeeping, and ask you before
15 the break about the different kinds of products that
16 Kelly-Moore had manufactured that at one point in
17 time had asbestos. And you had identified a number
18 of them, I think, to try to make a rough
19 guesstimate.

20 This is what's identified as KM 1019, counsel
21 also KM BB 6549. It was provided to us as a list of
22 31 products. Have you had an opportunity to look at
23 that?

24 A. I don't recall having seen this particular
25 sheet. I am familiar with some of the products that

1 are some photographs of a number of Paco -- what I
2 believe to be Paco products. If I could have you
3 identify these for us, might have a few additional
4 questions of you.

5 MR. HAZEN: Brent, if you would, as
6 you go through them, would you read off for me the
7 document number down on the right-hand side and that
8 way I can track them? I won't have to look at them.

9 MR. COON: Yes, sir. Although, the
10 numbers that are on these are our identifying
11 numbers, if that's okay with you.

12 MR. HAZEN: Okay. So you've -- do
13 you mind, I am going to come around and just take a
14 peek at them real quick.

15 MR. COON: Yeah. These may be ones
16 -- I am looking for what you-all had as the BB
17 numbers.

18 MR. HAZEN: Right. Did you go over
19 the BB numbers?

20 MR. COON: These don't have -- no, I
21 don't think so. I don't think these had BB numbers,
22 which makes me wonder if these came out of the boxes
23 or not.

24 MR. HAZEN: You want to go off the
25 record real quick?

1 are listed on here. Yeah.

2 Q. Okay. The -- the first thing I wanted to
3 ask on there, of the 31 products that were
4 identified as containing asbestos, how many of those
5 were under the Paco umbrella?

6 Obviously, a number of them are because they
7 actually had the Paco name, but I don't know if all
8 of them are or some of them are.

9 A. To the best of my knowledge, they all
10 would have been. They all would have been.

11 Q. Okay. So, if we look at the list of the
12 31 there that are identified, even if it doesn't say
13 Paco in front of it, we believe it to be a Paco
14 product?

15 A. Yeah, the taping compound. Yeah, I'd have
16 to say that is true. Yes.

17 Q. Okay. Do you have a recollection of
18 Kelly-Moore ever making any of those products under
19 any name other than the Paco umbrella?

20 A. I am not aware of that, sir.

21 Q. Okay. So the only ones we would have in
22 addition to this, from what you recall, would be the
23 possibility of what was rebranded with Georgia
24 Pacific at some point in time in the late '60s,
25 early '70s?

1 A. Could you ask me that question again,
2 please?

3 Q. Yes, sir. The only products that we have
4 here that were Kelly-Moore's asbestos-containing
5 products that would supplement this would be those
6 that were rebranded through Georgia Pacific, to the
7 best of your recollection?

8 A. The Georgia Pacific products would have
9 not have been sold through a Kelly-Moore store.

10 Q. Okay. So you wouldn't have them on a list
11 like this anyway because you considered those to be
12 separate because they were rebranded?

13 A. That's correct.

14 Q. Okay. We next have -- let me ask you one
15 more question. Of the list here, does anything seem
16 to be inaccurate with respect to this list, being
17 one of those products that contained asbestos?

18 In other words, can you look at the list and
19 say this one shouldn't be on there because I know
20 for a fact that one did not contain asbestos?

21 A. What -- are you talking in -- from the
22 time -- from the beginning to '60 through '82? Some
23 time frame some of these were converted to not
24 contain asbestos.

25 Q. I understand that. Probably the -- first,

1 Purpose Joint Compound.

2 Q. Okay. Was there a particular reason that
3 you would have big numbers, 5515 on there? Does
4 that have any particular significance?

5 A. I can't say that it would. Sometimes
6 contractors buy by numbers and they -- or they buy
7 by names, and so it -- this probably was there more
8 as a convenience thing.

9 Q. Okay.

10 A. We do that with our paint.

11 Q. Okay. Do you know whether or not when
12 Kelly-Moore acquired this product line if those
13 numbers were already there, the bags looked similar
14 to this at the time you acquired the facility?

15 A. No, I do not. I have not seen bags from
16 what they looked like when we bought Paco.

17 Q. Okay. So do you know whether or not there
18 was even a Paco -- Paco logo like that one on any of
19 the bags?

20 A. I -- I don't know, sir.

21 Q. Do we know if the Paco logo existed in any
22 form like that prior to the acquisition by
23 Kelly-Moore?

24 A. I do not know that.

25 Q. Okay. And we don't know if the 5515 there

1 is can you look at the list and say I know for a
2 fact this product never had asbestos in it?

3 A. I can't say that.

4 Q. Okay. Now, we next have a number of what
5 I believe to be photographs of various bags or
6 containers of Paco product lines.

7 A. I got it.

8 Q. And I'll show you what are marked KM 1025
9 through 1041, and there may be a couple of them
10 missing, but there is a -- pretty much a package
11 here. Are -- can you tell us, and looking at --
12 let's just look at the first one there, and actually
13 if you don't mind, if we can just flip that around
14 and show it to the camera so we have got an idea of
15 what we're looking at.

16 This says Paco Joint Compound, and the Paco
17 would be the -- I guess the trade name for the
18 product?

19 A. That's correct.

20 Q. Okay. Now, we have a number on it, for
21 that one is 5515. Is there any particular
22 identifications of that number? Does that tell you
23 something?

24 A. No. That's the number assigned to that
25 particular product. The product itself would be All

1 means anything with respect to the ingredients or
2 anything like that?

3 A. Well, that would be a product number. It
4 has -- has nothing at all to do with the
5 ingredients.

6 Q. Okay. And then it says joint compound.
7 Now, what would that product have generally been
8 used for?

9 A. That would have been used to seal the --
10 the basic joints.

11 Q. Okay.

12 A. And then you lay the tape on top, and then
13 put a finish coat on top of that.

14 Q. Is this the dry joint compound you talked
15 to us earlier about?

16 A. This is the dry and -- the material in the
17 bag would be the dry, correct.

18 Q. And would that have come in the 25- and
19 50-pound bags?

20 A. Correct.

21 Q. And would this kind of be a -- for people
22 that have not -- can't readily put their -- picture
23 on what it would look like, would it look kind of
24 like the bags of ready-mix concrete you could buy
25 from a home improvement store, that kind of bag,

1 just a tear-off top?

2 A. Yeah, I guess you could say that.

3 Q. Okay. Do you recall the colors of the
4 bags? Kind of brown? White?

5 A. Sort of grocery store brown type thing in
6 different colors depending at the time whatever the
7 bags were printed.

8 Q. Did Kelly-Moore have a typical supplier of
9 the bags for the various joint compounds and
10 cements?

11 A. To the best of my knowledge, Saint Regis
12 is the one that supplied the bags to the company.

13 Q. And would Kelly-Moore just tell them how
14 they would want the bags logoed and stencilled?

15 A. Kelly-Moore would have influence on that,
16 but Saint Regis also since they had a staff of
17 professionals that did this kind of thing, I am sure
18 probably provided some input as well.

19 Q. Okay. Now, if we look -- do you know when
20 these photographs were taken?

21 A. I have no idea.

22 Q. Okay.

23 A. When these were taken right here?

24 Q. Yes, sir.

25 A. I have no idea.

1 yes.

2 Q. And then you may have some indentations in
3 the sheetrock where the nail was embedded into the
4 sheetrock?

5 A. The nails are countersunk. That is
6 correct.

7 Q. Sure. So you go back and you would take
8 this, mix it with the water to a make kind of a mud
9 or something that's -- has a composition kind of
10 like mud?

11 A. Similar, yes.

12 Q. And then you would take a trowel or
13 something and spread it over the cracks to fill in
14 all the cracks?

15 A. Correct.

16 Q. And you would also fill it in over the
17 indentions where the hammers knock the nails in to
18 hold the wall -- the sheetrock up?

19 A. Correct.

20 Q. Okay.

21 A. And then you put the tape on top of the
22 seam, and then you put generally another coat on top
23 of that as a finishing coat.

24 Q. So, if we looked at the rolls that you
25 showed us earlier, the big rolls of paper, that

1 Q. Let's talk briefly about the next one. We
2 have a bag. This one's 1026, this one says, Paco
3 Vinyl Joint Compound, and it's got kind of a
4 striping pattern to it.

5 A. Right.

6 Q. What was that used for?

7 A. That was used for the same thing as the
8 All Purpose Joint -- but this could only have been
9 used in joint compounds, or doing joints. This
10 could have been used doing a few other little
11 things, such as you might want to use it as a -- as
12 a top coat as well.

13 Q. Okay. And the top coat, for the Ladies
14 and Gentlemen of the Jury that are not familiar with
15 the drywall -- drywall processing, what would that
16 be?

17 A. Okay. You have two pieces of drywall that
18 come together --

19 Q. Okay. This would be like in your house if
20 you have a four-foot by eight-foot sheet of drywall,
21 what a lot of people just call sheetrock because of
22 the popularity of that trade name, but if you buy
23 sheetrock or drywall, and you put it up on the wall
24 and nail it up, you got your cracks, correct?

25 A. Where the two sheets butt up together,

1 would be the tape that would come out in pools and
2 you would just -- like giant rolls of -- I guess if
3 you do something by analogy, it would be like a -- a
4 bathroom paper or something, comes in a long roll
5 and you just pull it out, off of the seam?

6 A. You could. It's a lot thicker than
7 bathroom paper. It's a lot thicker.

8 Q. Right. And in bigger rolls, but similar
9 analogy?

10 A. Yes.

11 Q. Okay. And you peel out whatever you need,
12 and tear it off. You can tear it off by hand or
13 with your tool I suspect?

14 A. Correct.

15 Q. And then you put it over the crack and
16 then you smooth out the paper with your trowel as
17 well?

18 A. Correct.

19 Q. And then you have a finished surface to
20 work with, correct?

21 A. And then you would put -- you put a top
22 coat on top of it.

23 Q. Okay. Now, what would be involved in
24 putting a top coat on?

25 A. You would trowel that on like you would

1 have troweled the base coat.
 2 Q. Okay. And there are a lot of different
 3 ways you can apply the sheetrock with your texturing
 4 compounds to give it different types of finishes for
 5 your ceilings and your walls? You can have a lumpy
 6 finish or you can have a wavy finish, all kinds of
 7 different tools to leave different patterns in the
 8 wall?

9 A. Well, that's different than the mud. The
 10 mud is what we refer to as mud.

11 Q. Okay.

12 A. The joint compound is what fills the
 13 joints, beds the tape, and then goes on top of the
 14 -- of the tape. When you do the texture, the wall
 15 texture, that's a separate step. That's -- that's
 16 done after all this is done, and it's a different
 17 type of material.

18 Q. Okay. So, in a commercial or residential
 19 application, you put your boards up, the studs, the
 20 wall frame, and then you take the sheetrock, or
 21 drywall, nail it up to the studs to have a solid
 22 wall, correct?

23 A. Correct.

24 Q. And then you would take the mixtures you
 25 have described here and you fill in the cracks and

1 Q. More three dimensional.

2 A. Yes.

3 Q. Okay. Well, let's talk about these other
 4 products and how they were used. The next one you
 5 have was the taping compound. This was Number 5525.
 6 That also came in 25-pound and 50-pound bags?

7 A. Yes, sir.

8 Q. And what was it used for?

9 A. It was also -- this was -- it gets a
 10 little confusing. There was in the early days a lot
 11 of these. There were many different types of
 12 products. This taping compound could also be used
 13 like the joint compound. It just performed a little
 14 bit differently. So, these three products could all
 15 have been used to do the same thing, only they just
 16 -- this particular product may have performed a
 17 little bit differently than the All Purpose. So, a
 18 lot of -- some of this became preference to -- from
 19 the contractor.

20 Q. Did all three of those products basically
 21 have the same ingredients?

22 A. That -- if you're talking about
 23 ingredients as far as raw materials?

24 Q. Yes, sir.

25 A. They may have varied, but they were

1 the nail indentions, to get a finished surface to
 2 work with?

3 A. Correct.

4 Q. And from there you can either put some
 5 other finishing touches on it or paint or whatever?

6 A. You can leave it the way it is, and just
 7 have the bare flat drywall, which would look like
 8 what we have in this room, or then you can take and
 9 put -- or you could put a texture finish on it to
 10 give it a little bit of a texture and then paint it.

11 Q. Okay. And same with the ceilings, a lot
 12 of homes and commercial businesses would have the
 13 drywall nailed to the ceiling as well, to the
 14 ceiling joists?

15 A. Correct.

16 Q. And you would do the same process, fill
 17 in the cracks, fill in the flail holes, and many
 18 times the ceilings would have more of a textured
 19 composition than the walls, where they would do it
 20 with brooms and all kinds of different ways to give
 21 it patterns?

22 A. When you say more of a texture, talking
 23 about a more defined texture?

24 Q. Sure.

25 A. Yes.

1 similar, yes.

2 Q. Did all three of those have asbestos as
 3 one of the ingredients?

4 A. Yes.

5 Q. Okay. Let's go next to 1029, looks like
 6 just some of the writing that's on one of the bags?

7 A. Yeah.

8 Q. So we will go to 1030, that is Wall
 9 Texture. Okay. Could you tell us about that one?

10 A. It's got wall and ceiling texture on it.
 11 Do you need to see this, Scott?

12 Q. And if we were to show this one, if we
 13 could hold it up, it says, again, the Paco logo, and
 14 it's called Paco-Tex Wall Texture. The other ones
 15 did not have Paco-Tex. Was there something in
 16 particular that would cause that one to have an
 17 additional trade name on it?

18 A. Well, other than I think the Tex applied
 19 to the fact that this was texture.

20 Q. Okay.

21 A. That's a yes.

22 Q. Okay. And then what was it used for?

23 A. The wall texture -- it's a dry powder.

24 The wall texture is used to give that sort of a
 25 little bit of an effect on the wall, and the ceiling

1 texture was the texture that went on the ceilings.
 2 Q. Okay. That's the other bag next to it,
 3 that was -- says Paco Textures and then it says
 4 Number 6373, Deco-Tex?
 5 A. Decorative ceiling texture.
 6 Q. Okay. And was that pretty much the same
 7 kind of material as the wall texture material? What
 8 was different about it?
 9 A. It had a different type of aggregate in
 10 it. It was a little bit rougher --
 11 Q. Okay.
 12 A. -- because you had a different finish.
 13 Q. Okay. Gave it a -- an ability to have a
 14 little more of a three-dimensional --
 15 A. Yes.
 16 Q. -- effect to it?
 17 A. Uh-huh.
 18 Q. Did it also come in 25-pound bags?
 19 A. Yes.
 20 Q. It was a powder?
 21 A. Yes.
 22 Q. Dry powder, mix it with water?
 23 A. Yes.
 24 Q. Stir it all up and use it?
 25 A. Right.

1 Q. How would these products typically be
 2 mixed with water? We have gone through five or six
 3 different 25-pound bags of this. When you opened
 4 them up, they were really just full of the dry
 5 ingredients?
 6 A. Correct.
 7 Q. The clays, the cements, and whatever the
 8 aggregates were, the asbestos, all of that was still
 9 in powder form, kind of like a giant bag of flour,
 10 right?
 11 A. Correct.
 12 Q. And if you -- and actually the bags are
 13 kind of like big bags of flour, where you could tear
 14 them open, paper bag and you tear them open, and
 15 then you would dump them in the buckets and add
 16 water?
 17 A. Yes, sir.
 18 Q. And then how would mix it up? Just stir
 19 it up with a stick or whatever you had?
 20 A. Whatever you had as to -- had to mix it
 21 through.
 22 Q. For commercial applications where a lot of
 23 this was used, did the contractors many times have
 24 some sort of blending units, or equipment, mixing
 25 equipment? Like giant blenders that you would --

1 compared to something you would have as a kitchen
 2 blender just on a bigger scale?
 3 A. Yeah, the equipment that we were looking
 4 at earlier this morning --
 5 Q. Okay.
 6 A. -- the Sprayline --
 7 Q. Right.
 8 A. -- type material, that was made to spray
 9 the material on. And what you would do, it was
 10 somehow -- and I haven't seen the equipment, because
 11 -- that particular equipment, but the powder goes
 12 in, the water goes in and then combines, and it
 13 squirts out.
 14 Q. Right. And we talked about the Sprayline
 15 products. You could actually -- if you had a lot of
 16 this to do, you would not want to do it by hand just
 17 because of the labor costs? So if you could spray
 18 it on with equipment it might be more time -- time
 19 saving?
 20 A. I -- I don't know if that's true, because
 21 a professional who knows how to use this, and if
 22 it's used properly, can go on rather quickly and
 23 easily.
 24 Q. What would have been the benefits of using
 25 the Sprayline equipment, then?

1 A. If --
 2 Q. A different effect?
 3 A. No. You -- on the joint compounds, you
 4 really had to do that by hand. The spray was more
 5 applicable to the texture when you're doing this
 6 whole room, so you have gone through and done the --
 7 Q. You have taped and floated?
 8 A. You have done all that, which is basically
 9 mostly done by hand, although there were -- there
 10 was some mechanical equipment that would help put
 11 the tape on with the -- with the bedding. But when
 12 you get to the texturing, you're doing large
 13 expansive areas, and that's where the machines came
 14 in handy.
 15 Q. Okay. Now, you had a machine that would
 16 -- once all of this was mixed, you opened up these
 17 bags and mixed them with water, and got them all
 18 stirred up. Then you could have the machines spray
 19 it out for you?
 20 A. Uh-huh.
 21 Q. Did the machine also mix it up for you?
 22 Could you dump the 25-pound bags into some hopper on
 23 the machine, and add water when you do that?
 24 A. Yes, sir.
 25 Q. Okay.

1 A. It's my understanding that's how they
2 worked.

3 Q. So you think it was a one-step piece of
4 equipment. You didn't have to go mix it, and then
5 dump it in the equipment, you think you could dump
6 the powder in there and it had a hose connected to
7 it or something where the water would blend it into
8 a mud, and ready to go?

9 A. My recollection, you could do it both
10 ways. People would do that, mix it and put it in
11 some type of a hopper, small one, and you do it by
12 hand.

13 Q. Okay.

14 A. Or you had machines where you dumped it in
15 and it all did it for you.

16 Q. Okay. Now, we go to the next one, this
17 just says Paco Textures, 1032. Is that maybe the
18 side of another bag?

19 A. Yeah. It says Semi-Liquid, so this would
20 have been what we call ready-mix.

21 Q. Okay. Ready-mix. Yeah, I see on the --
22 if we look at this one, if we held it up, and showed
23 this is not a flat bag, correct? This is something
24 else?

25 A. That's a box.

1 Q. Okay. This is in a box. So we got a
2 little bit different shape to it?

3 A. Yeah. I am trying to find you a better
4 picture.

5 Q. And on the side of the box it says,
6 "Semi-liquid, do not drop, protect from freezing."
7 Did I read that correct?

8 A. Yes.

9 Q. Okay. So what you have there is the
10 containers that would be sold by Kelly-Moore that
11 had already taken the dry powder that we've talked
12 about in these 25-pound bags and mixed it up with
13 the water so it's ready to go?

14 A. Correct.

15 Q. Okay. And would it still have the same
16 purposes for use as the ones that came in the powder
17 form?

18 A. Yes, sir.

19 Q. What would be the reasons that you would
20 have some of your contractors or customers wanting
21 it in a ready-mix form?

22 A. That's really a preference by the
23 contractor. It's a matter of convenience in that
24 you don't have to go out and have a supply of water
25 on new construction. You just open it and you're

1 able to put it in -- on.

2 Q. Do you know whether or not there was a
3 significant difference in the volume of sales
4 between the powdered stuff that was mixed by the
5 contractors versus that that was already premixed
6 with the water?

7 A. This -- this was our -- probably one of
8 our better selling products, the Ready-mix.

9 Q. Ready-mix?

10 A. Yes, sir.

11 Q. Okay. And let's go to the next one. This
12 is a called Paco Textures --

13 A. Joint Compound --

14 Q. -- Quik-Set?

15 A. -- Quik-Set, yes.

16 MR. HAZEN: Number, Brent.

17 MR. COON: This is 1033.

18 Q. (By Mr. Coon) And what are we talking
19 about with Paco Quik-Set Joint Compound?

20 A. What's -- what is the product precisely?

21 Q. Yes, sir.

22 A. The Quik-Set Joint did the same thing as
23 the other joint compounds did, the only thing is
24 this dried a lot faster. This was more like a
25 plaster-type thing, and there were three different

1 variations, speed at which it would dry. Then this
2 primarily was not meant to go and do a house or a
3 room with, because it dries quickly. It's a little
4 bit different type of product. This is more for a
5 smaller-type job.

6 Q. And this also came in the 25- and 50-pound
7 bags?

8 A. I know it came in 25. I'd have to go back
9 and refresh my memory if it came in anything bigger.

10 Q. And did it essentially contain the same
11 ingredients with the exception of something that was
12 more of a drying additive?

13 A. No, I believe this was compositioned a
14 little bit differently because of its Quik-Set
15 characteristics.

16 Q. Okay.

17 A. A normal contractor, with this material,
18 had a habit -- stay wet for a while so they could
19 really work with it because it's done a lot of it by
20 manual. This, on the other hand, was more of a
21 concentrated, smaller area.

22 Q. And do you know if that one also contained
23 asbestos?

24 A. It did.

25 MR. HAZEN: Objection, form.

1 Q. (By Mr. Coon) Okay. Next we have Paco
2 Spray Texture Number 5580.
3 MR. HAZEN: 1034?
4 MR. COON: Yes, sir. 1034.
5 Q. (By Mr. Coon) How does that one differ
6 from the other ones?
7 A. This is a sand finish.
8 Q. And what is a sand finish?
9 A. I guess the only way I could explain it is
10 you put some glue on the wall and you throw sand on
11 it, and that's -- it gives you a rougher-type
12 finish.
13 Q. Okay.
14 A. Coarser finish.
15 Q. It had a grittier finish --
16 A. Yes.
17 Q. -- or texture to it? Was it because they
18 put sand or something in it?
19 A. I believe -- I can't answer -- I believe
20 so. I don't know what the composition of this
21 particular was.
22 Q. Okay. Did that also come in 25-pound
23 powder form?
24 A. Yes.
25 Q. Asbestos a -- an ingredient in it?

1 MR. HAZEN: Objection, form.
2 A. Yes.
3 Q. (By Mr. Coon) Okay. Let's go to the
4 next one. This is Document 1036, Paco Textured
5 Number 5535 Finishing Compound. Also in 25-pound
6 bags?
7 A. Yes.
8 Q. Also powder?
9 A. Yes.
10 Q. Also with asbestos?
11 A. Yes.
12 MR. HAZEN: Objection, form.
13 Q. (By Mr. Coon) How was it used?
14 A. This would have been -- if you were using
15 this material in place of an all purpose, this would
16 have been the last coat. This would have been the
17 top coat that you put on, above -- on top of the
18 tape.
19 Q. And what would be the purpose of going
20 back with a finishing coat, from a contractor's
21 standpoint, with this product?
22 A. This product in itself was not as bodied
23 as the first coat. The first coat has to be bodied,
24 to fill -- help fill in those voids. This was a
25 little less body, which allowed it to be smoothed

1 out a lot easier as you trowel it on.
2 Q. And what do we mean by less bodied?
3 A. I don't know. I guess it's like making a
4 cake. You girls probably could help me.
5 You might have something that's a little bit
6 more viscous than something else. I mean, it's
7 primarily made the same way but it just doesn't have
8 the body, when you -- when you have got it mixed.
9 It -- it could be a little bit thinner somehow. And
10 I don't know how to explain it. I'm not a technical
11 guy.
12 Q. Could you get the same effect by using one
13 of the other compounds and diluting it with more
14 water, or did you lose some integrity of the product
15 if you did that?
16 A. I can't answer that. I don't know that.
17 Sorry.
18 Q. Okay. Next one we have Paco Textures, is
19 that another box?
20 A. This is the Ready-mix topping.
21 Q. Okay.
22 MR. HAZEN: 1037?
23 A. Yes.
24 MR. COON: This is 1037.
25 Q. (By Mr. Coon) And what is Ready-mix

1 topping?
2 A. It's this product here, in theory, already
3 premade.
4 Q. Okay. The finishing compound that's
5 already mixed with water?
6 A. Right.
7 Q. Okay.
8 A. In essence, that's the difference.
9 Q. And next -- this is part of a bag says
10 Paco -- Paco, maybe V-100?
11 A. You got two different deals there.
12 Q. Well, we can't read. One is the side of a
13 Quik-Set.
14 A. That's Quik-Set. That's different.
15 Q. We talked about it. Then there is a side
16 of something that says -- is that a V-100 Texture?
17 A. Yes.
18 Q. Was that off the --
19 A. V-100 Texture Vinyl something.
20 Q. Do we know what that was?
21 A. It was -- it's a texture. In this case,
22 it's the ceiling, the V-100 is the ceiling texture.
23 Q. Okay. Was that also in a 25-pound bag?
24 A. Yes. Oh, wait a minute. It looks like --
25 there is a 35-pound. This looks like a 35-pound

1 bag. All right.
 2 Q. Okay. And powdered?
 3 A. Yes.
 4 Q. Mixed with water?
 5 A. Yes.
 6 Q. Do you know whether it contained asbestos?
 7 MR. HAZEN: Object.
 8 A. It did.
 9 Q. (By Mr. Coon) It did?
 10 A. Uh-huh.
 11 Q. Okay. The next one, the Quik-Set, we have
 12 talked about it, have we not?
 13 A. Now, first of all, I want to clarify
 14 something.
 15 Q. Yes, sir.
 16 A. You asked me about containing asbestos.
 17 Q. Sure. We understand that --
 18 A. Since we started this conversation about
 19 '60/'64, I am telling you what these products had in
 20 them at that time.
 21 Q. Sure.
 22 A. Okay. I just want to make sure.
 23 Q. We do understand at some point in time
 24 asbestos was reduced or removed from some of these
 25 product lines.

1 A. We started removing it in 1972.
 2 Q. And we will talk more about that in a
 3 little bit.
 4 A. Okay.
 5 Q. And next we have 1039. This is called
 6 Paco Texture Paint Number 5563.
 7 A. Right.
 8 Q. 25-pound bag?
 9 A. Yes. Appears to be.
 10 Q. Powdered?
 11 A. Appears to be.
 12 Q. Contained asbestos at some point?
 13 A. It would have, yes.
 14 Q. And used for what, sir?
 15 A. This is where you -- where you want -- I
 16 don't know how to explain it. It gives you like a
 17 texture, but it's more of a paint. With the
 18 textures you had to spray. You could mix this with
 19 water and put it on with a brush.
 20 Q. Okay.
 21 A. And it would give you a textured type
 22 effect, little bit different.
 23 Q. And it would be most akin to what other
 24 product?
 25 A. Well, for the -- akin as far as

1 application or finish?
 2 Q. Akin -- what would be the closest product
 3 that you made to that one?
 4 A. There -- I don't know if there is anything
 5 that is close. Texture paint would be the closest,
 6 but I can't say you could compare the two.
 7 Q. Okay.
 8 A. I mean texture, wall texture.
 9 Q. Okay.
 10 A. Deco-Text.
 11 Q. Now, did this have a color to it? This is
 12 a paint but you mix it. It's a powder, right?
 13 A. It's a powder.
 14 Q. And you mix it with water?
 15 A. Right.
 16 Q. And you put it on the sheetrock or
 17 drywall?
 18 A. Right.
 19 Q. When you did that, would it have a
 20 finished painted look to it?
 21 A. No, you would have to paint over it.
 22 Q. Okay. Why was it called texture paint?
 23 It was a texture for paint?
 24 A. I am assuming it was called texture paint
 25 because you could put it on with other vehicles

1 other than trowels and -- or machines.
 2 Q. Okay. And that was because of the
 3 viscosity?
 4 A. Yes, sir.
 5 Q. Okay. Next we have got Document 1040.
 6 This is called Paco Texture Vinyl Base V-100. I
 7 think we saw a side of that bag --
 8 A. Yes.
 9 Q. -- at 1038.
 10 A. Yeah.
 11 Q. Is that the same -- is that the side of
 12 that bag?
 13 A. Appears to be, yes.
 14 Q. Okay. And I think you described that
 15 product for us. It says, Number 6373, Decorative
 16 Ceiling Texture?
 17 A. Correct.
 18 Q. Anything else about that you have not
 19 already told us about?
 20 A. Huh-uh.
 21 Q. And 1043, or actually that's 1041 --
 22 A. 1041.
 23 Q. -- appears to be the sides or bottoms of
 24 some of the bags as well?
 25 A. Hard to tell.

1 Q. Okay. Now, over the years, with these
2 products -- let me back up. First, we don't have
3 photographs here of each of the 31 product lines
4 that we have under Document 1019, do we?

5 A. You don't have --

6 Q. Do you know whether or not Kelly-Moore has
7 from its archives or -- or from whatever purposes,
8 copies of the other product lines that are on
9 Document 1019, to supplement the ones we have just
10 discussed?

11 A. I have seen copies of labels or packaging
12 in the archives, in the repository. Now, whether
13 all these are within that stack, I don't -- I do not
14 know that, sir. But a lot of what is on here is
15 what you have got there.

16 Q. Yeah. I think we have got 10 or 15 of --
17 looks like we have looked at photographs of about
18 half of those products that are on the list.
19 Ballpark.

20 A. Yeah, because you keep in mind some of
21 these are all the same, only they're like the
22 Quik-Set, you have three different products.

23 Q. Okay.

24 A. You have a fast, medium, and slow dry, so
25 that -- but that bag would be the same for that one,

1 Q. Okay.

2 A. So, even though it had the same basic
3 ingredients in it, it was -- it was made a little
4 bit differently to appeal to the Texas market, the
5 Texas users, and a lot of the products had different
6 alpha numbers on them, or letters.

7 Q. Okay.

8 MR. HAZEN: Hey, Brent, can we take
9 five for a quick bathroom break?

10 MR. COON: Sure.

11 MR. HAZEN: We've been going about
12 an hour or so.

13 MR. COON: That's good.

14 THE VIDEOGRAPHER: Going off the
15 record at 2:11.

16 (A recess was taken.)

17 THE VIDEOGRAPHER: Back on the
18 record, the time is 2:25.

19 Q. (By Mr. Coon) Okay. Mr. Giffins, we
20 just took another break and now that we're back on,
21 we were last going through the product lines, and in
22 looking at the bags, a number of them have a
23 caution. I believe we can go back -- look at this
24 one by example. It says, "Caution, contains" --

25 A. Right.

1 except that it would identify on the bag if it was
2 fast, medium or slow.

3 Q. Well, for instance, I don't recall seeing
4 one that said "Radiant Heat Fill."

5 A. No.

6 Q. Do you know what that was?

7 A. I have no idea.

8 Q. I did not recall one that said "Triple
9 Duty, Bestex D." Do you know what that was?

10 A. I think at one time Triple Duty, Bestex D
11 was the predecessor to the All Purpose, but I don't
12 want to swear to it.

13 Q. What about Bestex A?

14 A. You want to get real confused?

15 Q. Not really, but I am probably going to get
16 there.

17 A. Bestex product could have been made as
18 Bestex, say for ceiling texture, but there were
19 different formulas because some areas you had to
20 make a formula where it dried differently. The
21 formula for Texas is entirely -- was basically
22 different in a way, not basically, but there was a
23 difference in the formula than the Bestex would have
24 been in California, because of our humidity and heat
25 here from a drying point.

1 Q. -- "asbestos fibers, avoid breathing
2 dust."

3 A. "Avoid creating dust."

4 Q. Okay. "Avoid creating dust. Breathing
5 asbestos dust may cause serious bodily harm."

6 Is that a label or warning notice that you have
7 seen on other bags of the Paco textured product
8 lines?

9 A. Yes.

10 Q. Now, it's fair to say that that did not go
11 on to any of the bags that contained asbestos prior
12 to 1972, correct?

13 A. That is correct.

14 Q. Okay. So, you are not aware of any of the
15 Kelly-Moore product lines that contained asbestos
16 having any type of additional labeling on it, such
17 as what we just read, on any of the products before
18 1972?

19 A. I had not seen anything with a warning on
20 it prior to the items that were produced in '72.

21 Q. Okay. Now, in looking at these
22 photographs of the products, since they have this
23 label on the bottom, looks like it's mostly on the
24 bottom back of each of the bags, doesn't it?

25 A. I believe it appears to be at the bottom

1 of the bag, yes. In the back.

2 Q. And it's on the backside of the bag --

3 A. Yes.

4 Q. -- below the instructions, and
5 ingredients --

6 A. Correct.

7 Q. -- and all that other stuff? So it's fair
8 to say that when we're looking at these photos, for
9 it to have those labels on them dealing with
10 asbestos, we know that these pictures were taken in
11 '72 or sometime thereafter, certainly not before
12 '72?

13 A. I think it's a fair assumption, yes, sir.

14 Q. But, you don't know what year they were
15 taken?

16 A. I have no idea, sir.

17 Q. Okay. Now, if we were to look at these
18 same bags from, like, 1965, or 1970, for those
19 products that still had asbestos in them, and we
20 will talk more about that later, but for those
21 products that still had asbestos in them, would any
22 of them had any kind of labeling to identify that
23 asbestos was in the bags?

24 MR. HAZEN: Brent, I'm sorry, what
25 was your time frame again? I just missed it on that

1 we just identified on any of the bags, before 1972?

2 A. Again, I -- I can't answer that because I
3 haven't seen any of the bags prior. What I have
4 seen is what we -- what we have right here, sir.

5 Q. Okay. And it's fine. Mr. Giffins, I
6 guess just when you're telling me you haven't seen
7 any bags like that, it leaves me with the impression
8 that you may still believe that for some reason
9 there were labels like that on the bags, and so,
10 maybe it's just a misunderstanding. I just want to
11 be clear with you. Do you have any reason to
12 believe here today that there were any types of
13 labelings like what we have just looked at on these
14 bags, on any of the products before 1972?

15 MR. HAZEN: Objection, form.

16 A. Again, I don't know what was on those bags
17 prior to '72.

18 Q. (By Mr. Coon) Okay.

19 A. I know what was put on in '72, but I don't
20 know what was on there prior, sir.

21 Q. Okay. But as a corporate representative
22 for Kelly-Moore, has -- have other management
23 people, or people in the marketing or labeling or
24 bagging, or anyone, told you that they had warnings
25 like this on any of the bags before '72?

1 one.

2 Q. (By Mr. Coon) At any time prior to '72
3 for any of the products that had asbestos.

4 A. As I --

5 Q. Would there have been any labeling, to
6 your knowledge, that would have identified the bag
7 as containing asbestos?

8 A. No, as I said a little bit earlier, I am
9 not aware that there was anything on the bags prior
10 to '72, nor have I seen anything --

11 Q. Okay.

12 A. -- that would indicate that.

13 Q. And it's a two-fold question. One is,
14 you're not aware of the bags identifying asbestos as
15 one of the ingredients prior to '72?

16 A. That's correct.

17 Q. And in addition to that, you're also not
18 aware of any of the bags having any kind of warnings
19 or cautions about the fact that asbestos was in the
20 bag?

21 A. It's -- that's correct.

22 Q. Okay. Now, with respect to --

23 A. I have not seen any of that.

24 Q. Okay. Do you have reason to believe that
25 there were any types of labeling of the nature that

1 A. This particular warning was not put on the
2 bags until '72.

3 Q. Okay. And --

4 A. That particular warning.

5 Q. Okay. Now, and again you're saying that
6 particular warning, was there any other kind of
7 warning on any of the bags before 1972?

8 A. As I have indicated, I don't know, sir.

9 Q. You're not aware of any?

10 A. I am not personally aware of any. No.

11 Q. Do you have an understanding or reason to
12 believe for some reason that there were such
13 warnings?

14 A. I can't speculate. I really can't, sir --

15 Q. Okay.

16 A. -- to be frank with you.

17 Q. You don't have any reason to believe that
18 there were. Nobody at the plants told you that
19 there were or anything like that?

20 A. Nobody said there were, nobody said there
21 weren't.

22 Q. Okay. All right. Next, we have one other
23 that was in the series of photographs. This one,
24 counsel, is 1027. It says, "Monospray," and that
25 was in with the middle of these photos. Do you have

1 any reason to know why that was with those?

2 MR. HAZEN: Objection, form.

3 Q. (By Mr. Coon) Because it has a -- you can
4 barely read it here, but it says Baldwin, Ehret,
5 Hill. Have you heard of that company?

6 A. No, I sure haven't. I am not familiar
7 with that at all.

8 Q. Do you know whether or not Kelly-Moore had
9 any relationships with Baldwin, Ehret, Hill?

10 A. I don't even know who they are.

11 Q. The product line that was in the photo
12 called Monospray, have you ever heard of Monospray?

13 A. Have not.

14 Q. Don't have any reason to know why this
15 would be part of the records in the repository?

16 A. I do not.

17 Q. Okay.

18 A. First time I have seen that, sir.

19 Q. Okay. Do you know whether or not the
20 Monospray would have been something that would have
21 competed with the Sprayline products that you guys
22 had?

23 A. I have no idea.

24 Q. Okay. Do you know who any competitors
25 were of you-alls Sprayline product lines?

1 Q. -- rebranded yours?

2 A. They were rebranding with other people,
3 too, I believe, but they --

4 Q. Do you know if they made any product lines
5 of their own as well as rebrands?

6 A. I believe they did, but not to the
7 extensive offering that maybe suppliers such as us
8 had to offer.

9 Q. You believe you-all were the largest
10 supplier of the rebranded market for GP under those
11 years?

12 A. No way. No way.

13 Q. You think there were other people that
14 rebranded more for them from '68 to '71?

15 A. I don't know that for a fact but my
16 assumption was they were -- what I understand, they
17 were rebranding geographically.

18 Q. Okay. Do you know who else they were --
19 do you know who else GP bought product for to
20 rebrand?

21 A. I do not.

22 Q. Okay. And as I recall, GP was the only
23 one you recall rebranding for?

24 A. That's the one I'm aware of.

25 Q. We also mentioned the -- the plant in

1 A. When you're talking about Sprayline,
2 you're talking about the equipment that put it on?

3 Q. Yes, sir.

4 A. Oh, I know there was -- there is other --
5 I am -- I understand there were other people out
6 there who made similar equipment. For me to give
7 you their names, I wouldn't know off the top of my
8 head.

9 Q. Do you know any competitors of Kelly-Moore
10 that made any of the products like the ones we just
11 went through on documents 1027 through 1040?

12 A. Oh, there are numerous. I say numerous.
13 Had Hamilton --

14 Q. Let's go back to the '60s/'70s time frame.
15 Do you know any of the competitors regionally or
16 nationally at that time for the joint compounds and
17 textures?

18 A. I do not know them. I know of them.

19 Q. Okay. And who would those have been?

20 A. Hamilton was a big player. Oh, man, I'm
21 drawing a blank now. I am trying to think of the
22 company that bought Westco.

23 Q. I take it Georgia Pacific made some since
24 they --

25 A. Yes.

1 Houston where you made the vermiculite, or cleaned
2 it up?

3 A. Trilite.

4 Q. Trilite. The Trilite plant. The
5 vermiculite that was then used for your joint
6 compounds and textures, you told us about. Do you
7 have any recollection of who any of the other
8 purchasers of your -- of your vermiculite would
9 have been?

10 A. No, and I think I mentioned -- I think I
11 mentioned that earlier. I had no idea who that
12 would have been.

13 Q. Okay.

14 A. And maybe it was an assumption on my part.
15 I know that that material was supplied to Paco. I
16 had not seen any documentation that -- that
17 specifically said it was also sold to duh, duh, duh,
18 duh. But in the normal business, I think it -- it
19 could have happened, but, again, I'm only aware
20 specifically of it going from Trilite to Paco.

21 Q. Do you know whether or not Trilite would
22 have distributed the vermiculite to other companies
23 that were making the similar product lines that
24 Kelly-Moore was using it for; that is, joint
25 compounds and textures, or were they supplying it to

1 markets that were totally unrelated to your joint
2 compounds and textures?

3 A. I don't --

4 MR. HAZEN: Objection, form.

5 A. I don't know that, sir.

6 Q. (By Mr. Coon) You just really don't have
7 any clue who the other purchasers of the product
8 were?

9 A. Do not.

10 MR. HAZEN: Objection, form.

11 Q. (By Mr. Coon) Nor what their uses were?

12 MR. HAZEN: Objection, form.

13 A. It would be speculation.

14 Q. (By Mr. Coon) Okay. Now, Mr. Giffins, we
15 next have Document 1086. This is a few years later.
16 This is November of '77, are the handwritten notes
17 here, and it's typed also, November 2, '77 here.
18 This is a Paco invoice, and it lists a long number
19 of product lines, also has Kelly-Moore Paint Company
20 stencilled on the left margin. Do you know what
21 would have generated that document?

22 A. First of all, do you want the Bates
23 number?

24 MR. HAZEN: Please.

25 A. It's KM BB 4836.

1 Q. Okay. And was this something they did
2 what, weekly? Monthly? Quarterly?

3 A. I don't -- it depends on the situation.
4 Some stores today order three times a week. Other
5 stores only order once a week. It just depends on
6 the sales volume.

7 Q. Could the stores get that type of
8 supplies or resupplying by making phone calls, or
9 was there a written procedure or protocol that
10 needed to be followed all the time?

11 A. The only -- the only way I could explain
12 it to you is what I am familiar with since I have
13 been with the company in 1985, and I think what the
14 -- the way we -- the way it's done today, is the way
15 it's done for a long time; and that is, when the
16 stores place an order, they have to provide
17 documentation.

18 Q. Do you know --

19 A. They --

20 Q. I'm sorry.

21 A. They have to provide something that says,
22 this is what I want.

23 Q. Do you know if Kelly-Moore made an effort
24 at the headquarters of tracking how much each store
25 was requesting of different products to know what

1 MR. HAZEN: Thank you.

2 A. This is an order form.

3 Q. (By Mr. Coon) And how would these order
4 forms work?

5 A. This would have been a store order form.
6 If you go back to that brochure earlier where it
7 said branch, sales branch --

8 Q. Okay.

9 A. -- this identified here as branch, it
10 would have been a store, and it would have been a
11 Store Number 6135, or whatever it is, and this was
12 how they would have ordered their products.

13 Q. Okay. When a contractor came in, would
14 they fill out a form like this with one of the sales
15 reps in the store, or is this from the store to the
16 -- your factory?

17 A. Now, this -- this is the -- this is --
18 appears to be the order form that the store would
19 have placed with the factory.

20 Q. Okay. So, if you look at -- if the store
21 was low on supplies, of certain product lines, they
22 would fill out a requisition form, send it back to
23 Kelly-Moore's manufacturing facilities and say ship
24 us more of this stuff?

25 A. Yes.

1 they were selling and what they were not selling,
2 and the overall volume of business?

3 A. I have seen records that indicate that we
4 know what was shipped out of the warehouse.

5 Q. To each store?

6 A. No. In -- in total, in a given time, in a
7 given month. So much of this went out, so much of
8 that. But the -- to the -- to the location, up
9 until recently, that type of information was not
10 readily available.

11 Q. So, for instance, in Houston, if you had
12 -- how many stores did you have in Houston, back in
13 the '70s?

14 A. What part? Early?

15 Q. Just -- sure. Early.

16 A. Two or three.

17 Q. Okay. So, if you had three stores in
18 Houston, each of them may be doing different volumes
19 of business, and may be doing more business in one
20 area than another for whatever reasons, correct?

21 A. Conceivably.

22 Q. Would Kelly-Moore have any way of tracking
23 the information to determining -- to try to
24 determine that Store Number 1 is selling, say, 100
25 bags of joint -- dry joint compound a month, but

1 Store Number 2 is only selling two bags, and try to
2 determine why it is that one store is selling so
3 much more of a particular product than another?

4 MR. HAZEN: Objection, form.

5 A. Well, it's two questions. One, being back
6 in the early '70s, around that time, everything was
7 all manual, so if a -- you wanted to know what a
8 store was selling, you'd have to go through the
9 invoices and keep track, and go back and sort
10 something out.

11 The second part of your question, I think, was
12 applying to the geographic area. A lot of that had
13 to do with customer preference, and you could have
14 different customer preferences within the same city,
15 just geographically. So --

16 Q. (By Mr. Coon) The bags that we looked at
17 here, would they pretty much look like that through
18 the years, or were there a lot of changes to them
19 for some reason or another?

20 A. The ones that I've seen, basically, the
21 primary design was pretty consistent. There may
22 have been some color changes, or something, or maybe
23 a print size change or whatever, but --

24 Q. Could anyone else order any of these
25 products other than the local store?

1 been able to sell to non Kelly-Moore stores in the
2 geographic area that was allowed. Anytime you had a
3 Kelly-Moore store within a certain geographic area,
4 it was all through a Kelly-Moore paint store.

5 Q. Okay. They kind of had a -- a zone around
6 each of them that you couldn't sell to the -- the
7 public without going through the retail store?

8 A. It wasn't the intention of the company to
9 sell other than through its own stores to begin
10 with.

11 Q. Do you know what their typical radius was?

12 A. I can't answer that.

13 Q. 20 miles, or 50 miles or --

14 A. I can't answer that. The only thing I can
15 tell you would be my speculation.

16 Q. How would -- you said Mr. Freeman.
17 Mr. Freeman was one of the sales reps?

18 A. Mr. Freeman was the gentleman who opened
19 the plant in Tulsa in 1969, and then subsequently
20 moved the plant to Broken Arrow in 1975, and then
21 subsequently bought the business in 1978.

22 Q. Okay. Do you know whether or not there
23 were any field salesmen in any of the geographic
24 areas that went out to either commercial prospects,
25 business prospects, whether it was a company that

1 A. You mean outside of the company?

2 Q. Yes, sir.

3 A. Outside of the store employee?

4 Q. Yes, sir.

5 A. No.

6 Q. Was that tightly regulated?

7 A. Well, if it's anything like it is today,
8 yes.

9 Q. Okay. Do you know how it was in the '60s
10 or '70s?

11 A. As I say, we pretty well operate today the
12 way we did then as far as processing of the orders,
13 and there's -- it's pretty definite on how these
14 things are placed.

15 Q. Okay. And to your knowledge, there were
16 no distributors that would have allowed these
17 product lines to have gone out to the open market
18 without going through a Kelly-Moore local retail
19 store?

20 A. As I indicated earlier, the company's
21 objective from day one was to market through its own
22 stores, and to sell its own products through its own
23 stores. Paco was sold through the Kelly-Moore
24 stores.

25 At one point, like Mr. Freeman, he may have

1 did a lot of drywall work, whether or not it would
2 have been another mom-and-pop store out in the
3 woods, that was not competitive to the local
4 Kelly-Moore store, any other places where they could
5 try to sell the product and improve their market
6 share?

7 MR. HAZEN: Objection, form.

8 A. The -- the salesmen from whom?

9 Q. (By Mr. Coon) Kelly-Moore.

10 A. From a Kelly-Moore store?

11 Q. From a Kelly-Moore store, or from the
12 Kelly-Moore corporation.

13 A. Okay. The way -- the way it functions is
14 you've got Store A. Out of Store A, you could have
15 one sales rep, or you could have more than one
16 depending on the sales volume of that store. That
17 sales rep basically -- all -- went out and called on
18 painting contractors. He could call on the owner of
19 this building, to try to get that person to utilize
20 the paint product, or any of our products in that
21 building. He got compensated on commission based on
22 what he sold to the painting contractor, or actually
23 what he sold.

24 The company's directive was not to sell people
25 other than those that were serviced through the

1 Kelly-Moore paint stores.

2 So, the normal sales organization was not
3 structured and not encouraged in any way to go out
4 and look for a mom and pop, or dealer store, to sell
5 the product through. It would be very difficult --
6 well, you have to understand our -- our commission
7 schedule. And it would not have benefitted the rep
8 to do that anyway, because of the way our commission
9 schedule is structured.

10 I don't know if that answers your question or
11 not.

12 Q. That would mean he wouldn't get a -- a
13 sale, if he had a seller -- wholesale to somebody
14 else, he wouldn't get a commission?

15 A. For him --

16 MR. HAZEN: Objection.

17 A. -- to sell it to a mom and pop, for
18 somebody that's going to resell it, for him to make
19 a reasonable income on that sale, he'd have to sell
20 it to them at a price that would make it almost
21 impossible for them to competitively resell it.

22 Q. (By Mr. Coon) Okay. What about the
23 industrial suppliers? You were telling us there are
24 contacts with them. Could they go in, meet a
25 commercial user, industrial/commercial heavy user,

1 He puts it on these buildings, you know, or will put
2 it on a house.

3 Q. (By Mr. Coon) Would typically go to a
4 Kelly-Moore store and have his preferred customer
5 buying arrangement with them and go from there?

6 A. No, the painting contractor would go to
7 the store and buy it from the store.

8 Q. Right. And you get -- I think you said
9 they typically got a scheduled discount for being a
10 contractor?

11 A. Based on their volume, correct.

12 Q. Right.

13 A. There were different -- different price
14 schedules. Okay?

15 Q. Okay. Now you're talking about your
16 mom-and-pop painting contractor, or drywall
17 contractor?

18 A. Now, I want to clarify the industrial
19 thing.

20 Q. Okay.

21 A. I just want to make sure we're on the same
22 wavelength.

23 Q. Sure.

24 A. Okay. You got the regular painting
25 contractor who paints houses and he has one or two

1 target customer and direct sell to them, and not go
2 through the local store?

3 A. I want to make sure I understand what
4 you're talking about on industrial because my
5 terminology of industrial and maybe yours are
6 different.

7 Q. Well, I agree industrial and commercial
8 may have different connotation.

9 A. Yes.

10 Q. But for either one of them. For instance,
11 say you have a construction company that does tons
12 of drywall work with their subcontractors, and they
13 may have an economic motivation to buy product
14 wholesale for either themselves or for their
15 subcontractors. Could Kelly-Moore go to them, as a
16 prospect, and sell directly to them in bulk and have
17 it even shipped to them in bulk?

18 MR. HAZEN: Objection, form.

19 A. As you explain it, that scenario could
20 happen, but we need -- we need to make sure -- at
21 least from my clarification, to make sure I am not
22 giving you the -- bad information here.

23 There are basically three types of customers.
24 You have what we call the painting contractor. He's
25 the basic guy who buys the architectural product.

1 guys that they work out of a car or out of a truck
2 and they do painting.

3 Then you'll have what's called commercial.
4 These guys will have a large crew. They're
5 primarily into doing shopping centers. They're into
6 doing high-rises such as this. They're a different
7 type customer than the regular painting contractor.

8 Q. Sure.

9 A. Then the industrial is the customer who --
10 who has a construction site, or runs machinery, or
11 that type of deal. We don't deal with them as
12 industrials. We deal with the commercial and the
13 painting contractor.

14 Q. With respect to the commercials, for those
15 that did large volume, like I say, maybe they build
16 shopping centers where there is a huge volume of
17 drywall or sheetrock, and a huge need for the joint
18 compounds and floats and textures, would Kelly-Moore
19 ever service them directly instead of going through
20 the local stores?

21 A. No.

22 Q. Would they ever service them by going
23 through the local store in terms of giving them
24 credits but making shipments directly to job sites?

25 A. Now, that may be, because I was going to

1 come back and correct this. All sales go through
2 the store. The store is the base for the sales
3 transaction because, again, that sales rep who works
4 out of Store A, he gets compensated by the sales
5 that go through that store.

6 If the factory were to by chance -- let's say
7 that sales rep had a big order, and it was five
8 pallets of paint, just in theory, and it was a -- at
9 a job site that was close to the factory. He could
10 arrange for the factory to deliver those five
11 pallets of paint to the job site, but all that
12 billing goes through the store and the dealing with
13 the customers through the store.

14 Q. Okay. All right. Now, I want to
15 understand this type of invoice. Would this be a
16 comprehensive invoice, or does this just deal with
17 the -- looks like this sheet just deals with the
18 Paco lines.

19 A. I believe so. Yes.

20 Q. And then there is a Page 2, which is BB
21 4837. What is that one?

22 A. It's Paco. It's listing some of the other
23 products like the asbestos-free wall texture.

24 Q. Why would -- I'm sorry, why would this
25 form be different than this one?

1 were your in-store items; and then you had what I
2 understood to be sundries, being the other things
3 you bought from other vendors like paint brushes --

4 A. Uh-huh.

5 Q. -- rollers and stuff like that. But when
6 I look at this list I see, like, Paco Quik-Set Fast,
7 Paco Quik-Set Slow, and it lists the volume and the
8 25-pound bags. These are on the sundries list, but
9 I understood these to be things that were not
10 sundries because they were internal products.

11 A. Okay. It's a good point. Going back,
12 everything in the store that was sold through a
13 store, would have a preprinted sheet like this. So,
14 you would have a preprinted sheet for the paint.
15 You would have a preprinted sheet for the Paco. You
16 would have a preprinted sheet for all the sundries,
17 the brushes, rollers, sandpaper, and all that.

18 The store would take this, and this is -- make
19 an order off of these sheets.

20 Q. Okay.

21 A. By terminology, Kelly-Moore today, in
22 thinking of terms of today, everything we make is
23 our own manufacture. Anything that we don't make is
24 sundries. I have no idea of what the date of this
25 is here, but this is showing on the sundry form, and

1 A. Well, I think it's the same. It's just
2 that we don't have a copy of everything. So
3 somebody got shortchanged.

4 Q. Okay.

5 A. That's what it looks like. Got
6 shortchanged. Yes, somebody covered -- this has
7 been covered here. Just somebody wrote on that, to
8 give you that breakdown.

9 Q. Okay. Similar -- is this a later form,
10 later dated form, one used at a different time?

11 A. This says Arvada, which was our store in
12 Colorado, this says sundries, so this was a sundry
13 order form. We don't -- we didn't -- this was
14 considered a sundry.

15 Q. Okay.

16 A. Let me see if any of these items are on
17 this page.

18 Q. That's why I am wondering. If you look
19 here on the sundries, this is part of the sundries
20 here, this is all preform, right?

21 A. Right.

22 Q. And I had understood your testimony
23 earlier to be that you had your Kelly-Moore product
24 lines, which would have been your Kelly-Moore
25 paints, your Paco stuff, things that you guys owned,

1 it could have, because it's not a paint item, but
2 generally sundries would be stuff that we did not
3 manufacture. So that's a little confusing.

4 Q. Okay. So, to clarify, would the Paco
5 products normally be something that should be put on
6 the sundries line, or should they have normally gone
7 on this other kind of form?

8 A. They were probably classified as a sundry
9 because it was only a small part of the business,
10 very small part of the business we didn't -- I mean,
11 we were primarily a paint house.

12 Q. Okay.

13 A. Paco was just a small entity.

14 Q. The other line of questions that I had for
15 you earlier that you didn't have a lot of
16 information on, Mr. Giffins, concerned the actual
17 information that you may have regarding the
18 production and sale of drywall materials. Remember
19 I asked you something about that before, if you knew
20 actually anything about the volume of business, or
21 the total amount of product that was sold. And I
22 found what's -- this is KMX 2085, it's our Document
23 1099.

24 MR. COON: And, counsel, that's 2085
25 sequential through 2102.

1 MR. HAZEN: Thank you.
 2 Q. (By Mr. Coon) But if you look at that, it
 3 appears to be some in-house documents at Kelly-Moore
 4 that identify various locations, and over the
 5 different calendar years, the total volume of
 6 different types of product sales.
 7 Have you seen that document before, sir?
 8 A. I don't think I have seen this page. I
 9 don't think I have seen this before. I really don't
 10 recall. It -- if it came out of the repository, I
 11 probably have seen it, but I really don't recall it.
 12 Q. Okay. As I understand reading this, what
 13 we would do is we would look at -- for instance,
 14 this is the Richmond, California facility? Was that
 15 the Paco facility?
 16 A. Yes.
 17 Q. Okay. And if we look at the 60 through 64
 18 here, they don't have much information here in the
 19 early years with respect to the production numbers,
 20 correct, just sales volume?
 21 A. It appears that way.
 22 Q. Okay. Then if we go to the next page we
 23 have San Carlos, California, and picks up that next
 24 year '64, and would this be as a result of the
 25 facility moving from Richmond to San Carlos?

1 A. It would be my assumption that it was,
 2 yes.
 3 Q. Yeah. I think even here comments. I
 4 think it says facility was moved from Richmond, so I
 5 think that explains it. And it starts giving us
 6 better numbers with respect to the volume of
 7 employees and things like that, correct? But we
 8 still have information on the total number of
 9 purchase of pounds of product until '67, right?
 10 A. Appears so.
 11 Q. If we look at the -- at the fourth column
 12 in '67, we now are getting information not only on
 13 the amount of sales and the number of employees,
 14 number of people in production, but as we get close
 15 to the bottom, we actually have a total production
 16 in tons of the product, as well as total amount of
 17 asbestos purchases in tons for the product, correct?
 18 A. Correct.
 19 Q. So if we look at '67, for the San Carlos,
 20 California facility for the Paco product, we can see
 21 that there was 9927 tons of product made, according
 22 to this. Is that correct?
 23 A. Appears to be correct.
 24 Q. And of that, there would have been 585
 25 tons of asbestos purchased for that product line?

1 A. About six percent of the total tonnage was
 2 in asbestos, yes.
 3 Q. All right.
 4 A. That's about consistent.
 5 Q. I was going to ask you that. If you look
 6 at 585 being close to 600 and 9927 being close to
 7 10,000, we're looking at about 6 percent by weight
 8 being the asbestos, to the total production?
 9 A. Correct.
 10 Q. And it's -- we haven't discussed this, but
 11 generally the Paco product lines that contained
 12 asbestos were typically between five and eight or
 13 nine percent asbestos, were they not?
 14 MR. HAZEN: Objection, objection,
 15 form.
 16 A. No. It was around six percent is the
 17 number that I recall.
 18 Q. (By Mr. Coon) Pretty consistent six with
 19 all of them?
 20 A. If you look at averaging it out, the
 21 average is around 6 percent.
 22 Q. Okay.
 23 A. In the beginning.
 24 Q. Okay. And we will talk about that.
 25 A. Again, I want to go back to that '60/'64

1 time frame in the early days, because that's when
 2 those numbers occurred. But in 1972 --
 3 Q. Right.
 4 A. -- we started to change the products, and
 5 that changed that whole balance dramatically.
 6 Q. Sure. And we will talk about that. So if
 7 we look at '68, we have 11,500 tons, and a ton is
 8 2,000 pounds, right?
 9 A. Uh-huh.
 10 Q. So, if we multiplied this number by 2,000
 11 it will tell us the total amount of pounds bought?
 12 A. Correct.
 13 Q. And, again, in '68 for the purchase of
 14 asbestos, there was 844 tons of asbestos bought for
 15 that facility that year?
 16 A. Correct.
 17 Q. And, again, it looks like that's still
 18 running about six percent?
 19 A. It's a little bit over six, but yeah.
 20 Q. Six or seven percent?
 21 A. Right.
 22 Q. And we go to '69 through '73, and again,
 23 we can look at the numbers. We have 11,000 tons,
 24 and 844 tons of asbestos for '69, correct?
 25 A. Correct.

1 Q. 12,000 tons of product, using 654 tons of
2 asbestos in '70?

3 A. Correct.

4 Q. That's actually maybe just under six
5 percent total weight, would it not be?

6 A. Yes. Appears to be.

7 Q. And '71 we have 14,000 plus tons of
8 product, and 953 tons of asbestos, correct?

9 A. There was a little bit of a tip there.

10 Q. Right.

11 A. It was an increase.

12 Q. And so in that year, the percentage of
13 asbestos in the products actually went up to
14 probably closer to 7 or 8 percent, it appears,
15 correct?

16 A. Yes. According to those numbers, yes.

17 Q. Okay. And then in '72, you have 11,000
18 tons of product made, and, again, when we're talking
19 product, this is all the Paco products, correct?

20 A. Correct.

21 Q. We had 11,000 tons of Paco made at the San
22 Carlos facility with 534 tons of asbestos, so we're
23 down to about five percent again, correct?

24 A. Uh-huh.

25 Q. And then in '73 we have almost 9,000 tons

1 of product, with 442 tons of asbestos being used for
2 the product?

3 A. Correct.

4 Q. Again, right about five percent?

5 A. Five percent. But the -- obviously the
6 amount of tonnage of asbestos is declining in
7 relationship to the amount of tonnage of production.

8 Q. Okay. It actually -- yeah, it actually
9 looked like it was about six percent for several
10 times and around '71 it actually went up and then
11 '72, '73 went down again a little bit?

12 A. Yeah. That's because in '72, wait a
13 minute. Or '73, I believe is when we came out with
14 an all asbestos-free product --

15 Q. Okay.

16 A. -- which was one of our better selling
17 products.

18 Q. But you had some products starting in the
19 early '70s that did not have asbestos in them, so
20 therefore, the total amount of asbestos purchases in
21 -- in any given year would not have been that same
22 six or seven percent as it had been?

23 A. That's logical, yeah.

24 Q. Some of the products would have still had
25 the same amount of asbestos in them, but since some

1 others had no asbestos, the total amount of asbestos
2 you bought would go down?

3 A. Should be going down. Plus some of the
4 other products had -- were reformulated to contain
5 less asbestos.

6 Q. So, as we look through the '70s, we see
7 two different dynamics: One is some of your
8 products don't have asbestos in them, so the total
9 amount of asbestos you buy would go down from that,
10 correct?

11 A. Correct.

12 Q. And you also reduced the amount of
13 asbestos in some of our your other products, which
14 would be another reason the number would go down
15 some?

16 A. That's correct.

17 Q. And if we look through '74 through '77,
18 again, we have about 9,000 tons of product in '74,
19 with 245 tons of asbestos, correct?

20 A. Uh-huh.

21 Q. Next year 7700 tons to 235 tons of
22 asbestos, correct?

23 A. Correct.

24 Q. And then '76, 55, almost 5600 tons of
25 product, with 130 tons of asbestos. And then in

1 '77, we have about 5450 tons of product made, with
2 about 181 tons of asbestos?

3 A. And then at this rate we're talking about
4 two-and-a-half percent.

5 Q. Right.

6 A. So --

7 Q. So two-and-a-half percent of the total
8 weight of your products made at that facility by
9 1976 and '77 were asbestos?

10 A. Correct.

11 Q. And that was because --

12 A. Roughly if you're going by these numbers.

13 Q. Because some products had no asbestos in
14 it and some still had four or five percent?

15 A. (Indicating.)

16 Q. And then in 1978, we don't have numbers
17 off of this. Do you know why?

18 A. Because we stopped making asbestos,
19 products with asbestos.

20 Q. At the San Carlos, California facility?

21 A. In 1977.

22 Q. Okay. So the last you made
23 asbestos-containing products under the Paco name at
24 the San Carlos facility was in '77?

25 A. Throughout the company.

1 Q. Okay. Well, we will also ask you about
2 the other facilities.

3 Over these years -- let's back up real quick.
4 For '60 through '66, where we do not have numbers of
5 total volume or the number of tons of asbestos
6 bought, do you have any reason to believe that the
7 ratio of asbestos to total tonnage would have been
8 much different than it was in the late '60s?

9 A. It would be speculation on my part. I --
10 I really don't know. I had -- I don't know what --
11 you know, I can't tell you what was, sir.

12 Q. Okay. You don't have any reason today to
13 believe that there was significantly less or
14 significantly greater percentage of asbestos of the
15 product in the early years from '60 to '66 as there
16 was from '67 to the early '70s, do you?

17 MR. HAZEN: Objection, form.

18 A. I really don't know, honestly.

19 Q. (By Mr. Coon) Okay.

20 A. I really don't know.

21 Q. Okay. Well, Mr. Griffins --

22 A. At that time asbestos was used in all
23 drywall products --

24 Q. Right.

25 A. -- not just with ours, so I have no idea

1 didn't have the information.

2 Q. Okay. But in all fairness sitting here
3 today, we know that for those first six years, even
4 though there is no numbers here, we know that they
5 bought asbestos in a five or six percent ratio to
6 the total amount of their tonnage of product?

7 A. Only -- I am not going -- I can't comment
8 on the percentage, on the balance, sir. I really
9 can't. I don't know.

10 Asbestos was the prime product used in all
11 drywall products at that time, so there had to be
12 some purchasing of it would be my assumption.
13 Although it doesn't indicate it here, I don't doubt
14 that they didn't have the records up. As far as
15 percentage, I cannot speculate on that. I cannot.

16 Q. Okay. But, we know that we had sales, and
17 we know where we had product made, we just don't
18 know from a lack of records how many tons of product
19 were made, nor how many tons of asbestos was bought
20 to make the product?

21 A. That's apparent on this, yes.

22 Q. Okay. But we -- I thought we did have an
23 understanding that the products through those early
24 years contained five to six percent asbestos by
25 weight?

1 of the composition in the earlier years, sir.

2 Q. Okay. But, you do agree that the products
3 that were made at Paco from '60 to '66 had asbestos
4 in them?

5 A. From '60 to '66 had asbestos at an average
6 -- a weighted average of about five percent of the
7 total material, total package was about five
8 percent.

9 Q. Sure. So even though we don't see
10 asbestos being bought from '60 to '66, is just
11 because they have NA, which they did not have
12 available information?

13 A. Somebody didn't have the records for
14 whatever reason.

15 Q. Right. Didn't mean they didn't buy
16 asbestos, just meant they didn't have any
17 information available in the early years to go back
18 and determine how much asbestos they actually bought
19 for the Paco lines in the first six years?

20 MR. HAZEN: Objection, form.

21 Q. (By Mr. Coon) And that's what it
22 indicates, right?

23 A. Well --

24 Q. Where it says not available?

25 A. If it says not available, it means they

1 MR. HAZEN: Objection, form.

2 A. I know what it contained basically from
3 about the -- the '70s, and the late '60s, based on
4 some of the information we have. What happened
5 here, when you get into the early '60s, well, this
6 was when we bought the Paco thing, as you can see
7 they obviously didn't keep very good records, but
8 the point is, I have no idea what was involved in
9 it, sir.

10 Q. (By Mr. Coon) Okay.

11 A. No idea.

12 Q. Well, and I guess here is what I am trying
13 to find out, Mr. Giffins, is as the corporate
14 representative today, I am here to try to find out
15 what we can about the product lines that had
16 asbestos, and how much asbestos was in them. I
17 guess the dilemma I have is that we know that the --
18 the main lines that Kelly-Moore made that had
19 asbestos in them were the Paco product lines,
20 correct?

21 A. They were the only ones.

22 Q. And we know that that happened from 1960
23 when they bought the Paco facility all the way
24 through the later '70s, correct?

25 A. Correct.

1 Q. And what I am trying to find out for my
2 information and my clients is whether or not there
3 was asbestos in the Paco products in 1960, '61,
4 '62, '63, '64, '65, and '66, and I was of the
5 impression that it was, but you're not telling me
6 that it was.

7 A. I am looking at this. You and I both
8 agree this says NA, not available.

9 Q. Right.

10 A. I think I did say, sir, that at that time,
11 all drywall products primarily were made with some
12 amount of asbestos.

13 Q. Okay. Let me -- two-fold. One, when you
14 say all drywalls, you're talking about products
15 Kelly-Moore made --

16 A. The industry.

17 Q. -- and everybody else made?

18 A. Correct.

19 Q. Everybody's drywall product had asbestos
20 in it, to the best of your knowledge?

21 A. Yes.

22 Q. And to the best of your knowledge,
23 Kelly-Moore being in that industry, theirs had
24 asbestos in it, too?

25 A. I have to assume it did.

1 Q. Okay. Mr. Giffins, in the four or five
2 other depositions that you have given since you have
3 been brought in to be a spokesperson for Kelly-Moore
4 on these issues, have the other attorneys in these
5 cases asked you about the composition of asbestos in
6 these products in the '60 to '66 time frame?

7 MR. HAZEN: Objection, form.

8 A. No, I don't think I can say that they
9 asked as much about the composition of the product.
10 I am no chemist. I didn't structure the material.
11 I -- I have seen the batch tickets. I understand a
12 little bit of the raw material implications, but I
13 don't recall on the other -- I'd have to go back and
14 review them, but I don't know if there has been as
15 much emphasis put on the earlier days here, as far
16 as the composition, sir.

17 Q. (By Mr. Coon) So, as we sit here today,
18 we know that asbestos was in the -- all the product
19 -- Paco product lines from '60 to '66, but we just
20 don't know if the composition of asbestos in them
21 was more or less than it was in the later '60s?

22 A. I am assuming asbestos was part of it, and
23 I have no idea of the balance.

24 Q. Okay. Could have been more, could have
25 been less?

1 Q. Okay. And you believe that percentage of
2 weight of asbestos in the products to be five or six
3 percent?

4 A. I can't say that. I have no idea what it
5 was in these earlier days, sir.

6 Q. Okay. What would be a way for us to -- or
7 who would we talk to, to get a better -- a chance of
8 a better understanding of the amount of asbestos
9 that was in use in the Paco product lines in the
10 first five or six years that Kelly-Moore owned it?

11 MR. HAZEN: Objection, form.

12 A. Well, first of all, all the records are at
13 the repository. It's open for anybody to go in
14 there. Most everybody has gone through it, and
15 there are production batch tickets in there and so
16 forth, so I would think that if somebody is
17 interested in that, they can, you know, make a trip
18 to the repository --

19 Q. (By Mr. Coon) Okay.

20 A. -- with all the records.

21 Q. Okay. Have they --

22 A. I can't tell you what that --

23 Q. Sure.

24 A. -- percentage is, if those records are
25 there.

1 A. Sure could.

2 Q. Now, with respect to where the asbestos
3 came from, when we look at this, you know, 600 tons,
4 700, 800, 900 tons of asbestos --

5 A. Excuse me.

6 Q. -- is a lot of a product, so --

7 MR. HAZEN: Objection, form.

8 MR. NANTZ: Objection, form.

9 Q. (By Mr. Coon) Well, that's more than a
10 dump truckload, isn't it?

11 MR. HAZEN: Objection, form.

12 A. Yeah. But you're still looking at only
13 from anywhere from nothing to two-and-a-half to
14 maybe five percent of the total mix of the product.

15 Q. (By Mr. Coon) Okay. Well, sure. And if
16 we look here when we talk about 11,000 tons of
17 product, that's a lot of product, too, right?

18 A. Uh-huh.

19 MR. HAZEN: Objection.

20 MR. NANTZ: Objection, form.

21 Q. (By Mr. Coon) We're talking about you
22 would have to multiply that number by two and put
23 three more zeros behind it, so we're talking about
24 22 million pounds of product, right?

25 A. Possibly, yes.

1 Q. Well, I mean, if you just take that number
2 and multiply it times 2,000, that's about how much
3 product, Paco product, they made that year?

4 A. Okay.

5 Q. And you call -- is that a lot of product
6 to you? A lot of anything to you, just by weight,
7 something that's 22 million pounds?

8 MR. HAZEN: Objection, form.

9 MR. NANTZ: Objection, form.

10 A. Well, it's kind of hard. It just depends
11 on, I guess what part of -- perspective you're
12 trying to put it in. When I look at our plants,
13 that California makes 10 million gallons a year, and
14 if you equate that to pounds, I think it would far
15 exceed this.

16 The Paco part of the business was a very --
17 was a small part of the total business. Now, if you
18 look at this poundage in relationship to this, it
19 seems like a lot. Okay? But in the scheme of
20 things, this was a very, very small part of our
21 business.

22 Q. (By Mr. Coon) Okay. With respect to the
23 -- let's take '69 here, for example. The 844 tons
24 of asbestos, that would have been about
25 one-and-a-half million pounds of asbestos?

1 years?

2 A. I do.

3 MR. NANTZ: Objection, form.

4 Q. (By Mr. Coon) And who were they, sir?

5 A. Carey Canadian out of Canada, Union
6 Carbide and Johns-Manville.

7 Q. Were they the three predominant suppliers
8 over the '60 through late '70s time frame?

9 MR. NANTZ: Objection, form.

10 A. From what I have seen of records, they
11 were the only suppliers.

12 Q. (By Mr. Coon) Okay. In any given year,
13 did Kelly-Moore deal with all three of those
14 companies, or was that a year-to-year contract?

15 MR. NANTZ: Objection, form.

16 Q. (By Mr. Coon) Or did it vary on -- over
17 the time frames over the years?

18 A. You know, in looking at the -- in looking
19 at the spread out, I think there were some years
20 where there may -- some -- asbestos was bought from
21 all three, but the varying degree, certain ones were
22 larger suppliers to the company than others.

23 Q. Okay. Was there a particular reason that
24 asbestos was bought from those three companies? Was
25 there a -- a pricing issue, or a quality of the

1 A. You're talking -- right here, the 844?

2 Q. Yes, sir.

3 A. Okay.

4 Q. Been a little over a million and a half
5 pounds. I think actually about 1.7, close to 1.7
6 million pounds?

7 A. I'll trust your calculation.

8 Q. I'm not the best at math but that's
9 ballpark. Where would that kind of load of asbestos
10 come from?

11 MR. NANTZ: Object to form.

12 Q. (By Mr. Coon) How would it get shipped to
13 you guys? I mean, this is obviously not enough --
14 the volume is such you can't go pick it up in your
15 pickup truck, right?

16 A. Huh-uh.

17 Q. Okay.

18 A. No.

19 Q. How was this stuff supplied? Was it --

20 A. A lot of --

21 Q. -- 18 wheelers or railcars?

22 A. A lot of it came in railcars and then some
23 of -- I believe was delivered by tractor-trailer.

24 Q. And do you know who the suppliers of the
25 asbestos were for the Paco product lines over these

1 fiber, or the fiber composition, or what? If you
2 know.

3 A. No, I really don't. I can only -- I can
4 only assume, so I -- I would have to say I don't
5 know.

6 Q. Do you know anything about the different
7 fiber types of asbestos? You hear anything about
8 the different fiber types?

9 A. Vaguely familiar, yes.

10 Q. Do you know the differences between the
11 amphiboles and the serpentine fibers?

12 A. Vaguely.

13 Q. What's your understanding of those
14 differences?

15 A. Serpentine is what -- basically is what
16 the Chrysotile asbestos came from, is what we used
17 in all of our products.

18 Q. That was the next line of questions, if
19 you had an understanding of the principal types of
20 asbestos fibers that you-all bought. You believe to
21 be Chrysotile?

22 A. That's all we bought.

23 Q. Was there a particular reason that for
24 your products the Chrysotile was a preferred fiber
25 type?

1 A. I think it had to do with the -- with the
2 length. It was a little bit shorter, little bit
3 finer than some of the others and, therefore, worked
4 well in the drywall products.

5 Q. Next we go to under the same chart --
6 counsel, we're up to about pages 2089 of it -- the
7 Ontario, California facility. Did that one ever
8 make any of the Paco lines?

9 A. Yes.

10 Q. The chart starts at '68. Is that the
11 first year that they started making it at the
12 Ontario facility?

13 A. Do you have that letter again?

14 Q. Yes, sir.

15 A. I can tell you.

16 Q. I think this says '68 on Mr. Merrill's
17 letter.

18 A. I am trying to find it on here.

19 Q. It's the bottom of the first page.

20 A. Here it is, first page, second par --
21 third paragraph from the bottom. In '68 they added
22 the drywall material to Ontario, and then they shut
23 it down in '75.

24 Q. Okay. Now, the Ontario facility, was that
25 already an operating facility of Kelly-Moore before

1 joint compounds, and it -- I don't know what that
2 means -- as fillers, it does show numbers here, but
3 they weren't carried down.

4 Q. Okay. Do you know whether or not that is
5 all that was manufactured at that facility, with
6 respect to Paco lines, were the ready-mix joint
7 compounds?

8 A. I don't know, sir.

9 Q. Okay. Because the ones under it was
10 production tons of the dry powder --

11 A. Dry powder.

12 Q. -- products joint compounds?

13 A. It could have been. Again, I am only
14 going by this sheet.

15 Q. Okay.

16 A. It could have been that that was the only
17 product that they made there.

18 Q. Okay. So, it could be that in looking at
19 1420, that number could have carried down to the
20 bottom, but we just don't know if that's the only
21 product they made?

22 A. That is correct.

23 Q. And, likewise, we don't have any
24 information on the first two years with respect to
25 the quantity of asbestos used in those products?

1 they went into the drywall manufacturing there? If
2 you know, was it already --

3 A. I don't know. I think that was basically
4 put in there to be part of an emphasis to be able to
5 get into southern California.

6 Q. Okay. Well let me ask -- if I read this,
7 maybe this will answer it. It says, "We added a
8 drywall manufacturing facility to our Ontario,
9 California paint factory."

10 A. Right.

11 Q. So --

12 A. So that would imply they came after.

13 Q. It would imply there was already a paint
14 factory there and they expanded to provide drywall?

15 A. I'll buy that.

16 Q. Okay. And that operated from '68 until
17 1975?

18 A. Five.

19 Q. And if we look at this chart, again, we
20 have, unfortunately, no information on the total
21 production in tons of Paco products in '68, nor the
22 amount of asbestos that was used, correct?

23 A. Well, I don't know if that's true. It
24 looks like somebody didn't carry a number down. If
25 you go by this, production in tons of ready-mix

1 A. Evidently it's not showing there.

2 Q. Okay. If we get to the third year, '70,
3 it shows 20 tons of asbestos purchased. And, again,
4 we don't have a total production in tons but we do
5 have production of ready-mix, correct?

6 A. Of this, yes. The first full year is
7 '72.

8 Q. Right. And then the next year, '71, we
9 don't have any information on any of the amounts of
10 production of the ready-mix, or dry, but we do have
11 65 tons of asbestos purchased.

12 A. Oh, you're talking about '71.

13 Q. Yes, sir.

14 A. Yes. I'm sorry, you're right.

15 Q. And for '72, again we actually have better
16 information that shows this year in '72, they
17 actually had the determination of how much ready-mix
18 was made as well as the dry powder, which is 2193
19 tons, correct?

20 A. And, again, -- that's correct. If I look
21 at this, then I assume it was -- again, I have to
22 look and see, but this tells me the same information
23 I think it's telling you, is that these are correct,
24 they didn't make the dry powder until 1975.

25 Q. Okay. So, then we look in '75, we got a

1 number and then it gives us a -- two subtotals and
2 one total of 4100 tons of product and 126 tons of
3 asbestos bought there?

4 A. Right.

5 Q. And for '73, '74 and '75, it shows 129
6 tons in '73, and 117 tons in '74, and apparently
7 none in '75, and it indicates that -- it's kind of
8 hard to determine here, but it looks like that early
9 in the year they shut down the plant.

10 A. Yes. And it could be that they were only
11 making the asbestos-free product at that time.

12 Q. Okay.

13 A. Because that asbestos-free product was
14 available by then on one of the textures.

15 Q. Right. But we went from 5 or 6,000 tons
16 of product a year, down to 4,000 something in '73,
17 and only 400 in '75 indicates it was winding down?

18 A. Yes, sir.

19 Q. Okay.

20 MR. HAZEN: Hey, Brent, can we take
21 a break? I'm having a coughing attack.

22 MR. COON: Oh, yeah. Sure.

23 THE VIDEOGRAPHER: Going off the
24 record at 3:17.

25 (A recess was taken.)

1 A. I do not know, sir.

2 Q. What happened in '72?

3 A. Closed it down.

4 Q. Was it sold to -- the equipment sold off
5 to anyone else or did they just shut it down?

6 A. Closed the factory down and continued to
7 operate a store out of there for a while, and then
8 subsequently moved from that facility and located
9 elsewhere now.

10 Q. Okay. And if we look at the forms there,
11 which is actually on KMX page 2091, we have the
12 Kirkland, Washington facility identified, '69 to
13 '72, and it shows the amount of products and
14 employees and total amount of production for seventy
15 -- '69 through '71, but there was not any available
16 information on the amount of asbestos contained in
17 those products. Is that correct?

18 A. That's what it shows here.

19 Q. Okay. If we go to -- now, on this one
20 where it says, NA, it's for total asbestos, we
21 understand this form to be the identity of those
22 companies that says, "Products Containing Asbestos,
23 Factory Location." It's on the top of each page
24 here I think.

25 A. Right.

1 THE VIDEOGRAPHER: Back on the
2 record. The time is 3:33.

3 Q. (By Mr. Coon) Mr. Giffins, we took another
4 break. I want to go back through real briefly. We
5 still have a lot of information to cover, but let me
6 run through some more of these documents with
7 respect to the production records.

8 We have the Kirkland, Washington facility next,
9 and if we go back and look on Mr. Merrill's summary,
10 there is some additional information about when and
11 where that facility was opened and operated?

12 A. It was a short time if I recall. It was
13 like three or four years. If I could find it on
14 here.

15 Q. This chart indicates '69 to '72.

16 A. That's about right, because it was not
17 open for that long.

18 Q. Okay. Was this an acquired facility?

19 A. Yes.

20 Q. Who had it before?

21 A. Oh, I was afraid you were going to ask me
22 that. I can't recall.

23 Q. Did they make drywall compounds there
24 prior to the acquisition, or was it a converted
25 facility?

1 Q. So, I am presuming that when we look at
2 this, based on the title, that there was asbestos in
3 the product, but we just don't have any information
4 on how much?

5 A. Our assumptions would be similar.

6 Q. Okay. Do you know which Paco products
7 were made at this facility?

8 A. Not off the top of my head. I think that
9 information is available but I don't -- I don't
10 recall off top of my head.

11 Q. Okay. So the next page, we have Hurst,
12 Texas. Now, this is the facility that you work at?

13 A. Yes, sir.

14 Q. And it opened in '70/'71.

15 A. It was opened in -- well, the plant was
16 opened officially in late '70, yes.

17 Q. And we have full year production records
18 starting in '71 apparently?

19 A. Evidently.

20 Q. Correct?

21 A. Yes, according to this.

22 Q. And unfortunately, the first two years do
23 not show the amount of product made, but it does
24 show the amount of asbestos purchased?

25 A. That is correct.

1 Q. And for '71 it was 678 tons; and Year 2,
2 827 tons?

3 A. Correct.

4 Q. And then in Year 3, which is 1973, we
5 actually start seeing the index reflecting the total
6 amount of product, which is 17,000 plus tons, and
7 the amount of asbestos which is now 400 tons,
8 correct?

9 A. Correct.

10 Q. And '74 and '75, numbers again speak for
11 themselves, correct?

12 A. Yes. And then this number would obviously
13 be well below five percent in 1973, if you look at
14 the tonnage.

15 Q. Okay. And that's again because of phasing
16 out asbestos in some products and reducing the
17 amount in others?

18 A. That was started in '72, and the first
19 asbestos-free product came out in '73, and it -- and
20 could have been influencing that, yes, sir.

21 Q. And then we carry over to '78, and the
22 record reflects in '76, 13,000 plus tons of product,
23 and 342 tons of asbestos in those products?

24 A. That's correct.

25 Q. 15,000 tons plus in '77 of product, and

1 A. I mean '82, yes, excuse me. Thank you.

2 Q. Okay. So we believe the Paco products
3 line reflected here would have carried forward from
4 the late '70s on into the early '80s, but they would
5 have just not -- they would have been asbestos-free
6 then?

7 A. That's correct.

8 Q. So that would not have been reflected on
9 the chart because this only shows products when they
10 had asbestos?

11 A. That's correct.

12 Q. And then we look at the ledger for Dallas,
13 this starts -- that was the '63 to '70 facility?

14 A. That was the year that we bought Hanna
15 Paint, yes.

16 Q. Hanna Paint? And that would have been to
17 1970, correct?

18 A. Correct.

19 Q. And then you closed that facility because
20 you got a new facility in Hurst?

21 A. Correct.

22 Q. So, if we look at the years here from '63
23 to '70, we don't have good information on the amount
24 of product made, or total production, or asbestos in
25 those products until '67, correct?

1 600 plus tons of asbestos, correct?

2 A. Correct.

3 Q. And the last year is '78, we're down to
4 1884 tons of product and 23 tons of asbestos?

5 A. Correct.

6 Q. And that was due to that facility
7 discontinuing the Paco product lines?

8 A. We in 1977 made a decision to get out of
9 -- at that point making asbestos products. So this
10 obviously was the tail end of it.

11 Q. Okay. Now, did the facility in '78
12 continue to make products that did not contain
13 asbestos --

14 A. In -- in Hurst?

15 Q. -- in '78? Yes, sir.

16 A. Hurst? Yes, I believe they did.

17 Q. And for how long did they continue to make
18 products there after they discontinued making
19 asbestos-containing products?

20 A. I don't recall off the top of my head, but
21 as I said earlier, the -- the entire Paco thing was
22 shut down in 1982, and I think Hurst may have been
23 one of the last facilities that was shut down. So,
24 they probably tailed more toward the end of '72.

25 Q. '82?

1 A. That's the first time it shows any
2 asbestos, that's correct.

3 Q. Yeah. And so for whatever reasons there
4 was just not good information made available on the
5 amount of product made, or how much asbestos was
6 bought until that year. In '67 we see 93 tons of
7 asbestos bought for that product line?

8 A. Again, that's 40 years ago, and it could
9 have been --

10 Q. Sure.

11 A. -- records weren't readily available.

12 Q. Or maybe they're there now and just still
13 haven't been located in the right format or
14 whatever.

15 A. Could have been.

16 Q. You're talking '67, 93 tons purchased,
17 correct? Are these also the Paco lines, this Paco
18 product?

19 A. Yes, sir.

20 Q. Then we get to '68, '69 and '70, we still
21 did not have information on the total production or
22 the amount of production, but it shows the amount of
23 tons of asbestos each of those three years being 173
24 tons, 53 tons, and 197 tons respectively?

25 A. Correct.

1 Q. Okay. Then we have the Denver, Colorado
2 facility. This also made Paco products?
3 A. It sure did.
4 Q. Same types we have been talking about?
5 A. I -- they may not have made all of those,
6 but they made some Paco products, that is correct.
7 Q. Okay. And then we go '73 through '76 with
8 that facility? What happened in '76? Were they
9 closed?
10 A. It was closed.
11 Q. And how was it this facility first opened
12 in '71? New facility or acquired facility?
13 A. It was an acquired facility, if I recall.
14 Q. Did they make product containing asbestos
15 at that facility before '71?
16 A. I don't know. We bought that, I believe,
17 from Professional Paints, or what they called Pro
18 Paint at the time. Here in 1971 we added a drywall
19 manufacturing facility to our Denver -- so in '71 --
20 so we had to buy this prior because it was the
21 paint --
22 Q. Okay.
23 A. It was prior.
24 Q. This preexisted '71 as a paint operation
25 of Kelly-Moore?

1 A. Right.
2 Q. Is that correct?
3 A. Yes.
4 Q. Okay. And for those years, '67 through
5 '74, the Houston office would have made the same
6 Paco product lines we have been talking about?
7 A. They would have made some of them, because
8 not all plants necessarily made everything.
9 Q. Okay. And if we look here, it shows for
10 the first -- actually for all years, '67 through
11 '74, there is no information on the amount of
12 production of tonnage of product?
13 A. Of total tonnage, correct.
14 Q. Right. Or of the amount of ready-mix or
15 dry powder mix?
16 A. Right.
17 Q. It just shows the number of employees each
18 year?
19 A. It does show the sales.
20 Q. The sales and employees?
21 A. And get an idea of the growth of the --
22 Q. Okay.
23 A. From that standpoint.
24 Q. Okay. And it looks like a bell curve,
25 started out kind of low, went up, peaked, peaked in

1 A. Evidently, yes, sir.
2 Q. And then in '71 it was expanded to include
3 a Paco product line?
4 A. Correct.
5 Q. And that existed through, apparently '76,
6 correct?
7 A. That's what it appears to be.
8 Q. And unfortunately we have some records on
9 the total production in tons, but there was no
10 record keeping of the amount of asbestos bought for
11 that facility for any of the calendar years,
12 correct?
13 A. It appears that way.
14 Q. We next look at Houston, Texas, and this
15 was -- is this the facility we talked about earlier,
16 the vermiculite facility?
17 A. I don't believe so. I think there were
18 two separate facilities, sir.
19 Q. Okay. So we had the vermiculite plant,
20 and then we had the separate facility open in
21 Houston from '67 until '74.
22 A. That's what this says, right.
23 Q. And then it indicates that facility was
24 closed, and the Houston area got supplied from the
25 Hurst, Texas facility?

1 the early '70s, and then went back down into '74 as
2 they started phasing it out?
3 A. Right.
4 Q. And the asbestos composition, we can see
5 it for each of the years: 23 tons, '67; 75 tons in
6 '68; and unknown amount in '69. Again, most likely
7 record keeping?
8 A. Either that or records weren't available.
9 Q. 1970, 83 tons; 1971, 87 tons; 1982, 319
10 tons; 1973, 365 tons; and 1974, 184 tons. Correct?
11 A. Correct.
12 Q. And then last we have the Tulsa,
13 Oklahoma --
14 A. Excuse me, can I look and see something a
15 minute here?
16 Q. Yes.
17 A. It's interesting. On the same amount of
18 sales in '71, they only used 87 tons of asbestos,
19 and similar sales in '72.
20 Q. '72 and '73, and --
21 A. It's interesting.
22 Q. Yeah. Interesting spike in the amount of
23 asbestos?
24 A. Yeah.
25 Q. You don't know what that was due to?

1 A. I do not, sir.

2 Q. Okay. If we look at the Documents 21 --
3 this is 2100, counsel -- we're talking about the
4 Tulsa, Oklahoma facility now, and this made Paco
5 products from '69 until '74?

6 A. '75 is when they moved to Broken Arrow.

7 Q. Okay. There are some comments on the
8 bottom about relocating to Broken Arrow in '75.

9 A. In August of '75.

10 Q. And I bet you if you look at the next
11 page, there it is, Broken Arrow is the last one.
12 '75 through '77?

13 A. Right.

14 Q. So that's the relocation of the Tulsa
15 facility?

16 A. That is correct.

17 Q. And for records of '69, '70, and '71, we
18 apparently don't have any for anything other than
19 the sales for each year?

20 A. Evidently, going by this.

21 Q. Yeah. So we don't know how much product
22 made, how many Paco products made, total tonnage of
23 Paco, or the asbestos purchased for those
24 facilities, correct?

25 A. Correct.

1 made?

2 A. You're talking about the locations
3 themselves?

4 Q. Yes, sir.

5 MR. HAZEN: Objection, form.

6 Q. (By Mr. Coon) Are there other facilities
7 that made Paco products that we have not discussed
8 here?

9 A. I don't believe so. It appears to be all
10 of them.

11 Q. Okay. Next, real briefly, Mr. Giffins, we
12 have the -- this is Document 1020, four pages. This
13 appears to be a -- some sort of form instructions
14 that go with the different products. Have you seen
15 those types of documents before?

16 A. I don't think I have seen this one per se,
17 but -- but I know what it is. It appears -- appears
18 to be directions, like on the back of a package.

19 Q. Okay. Were those directions that would
20 typically be handled -- handed out by the local
21 store, or is that something retyped from what's on a
22 bag or what, if you know?

23 A. This is probably what was typed that went
24 onto the bag. Generally instructions are typed out,
25 and then they get printed onto the bag as to how

1 Q. '72, we have it only for asbestos being
2 235 tons; '73, 236 tons; and '74, 298 tons, correct?

3 A. Correct.

4 Q. And we still don't have any information on
5 the total amount of products for those years,
6 though, do we --

7 A. Not for that, no.

8 Q. -- for this? And if we get to when they
9 relocated at Broken Arrow in '75, we now have better
10 information on the production. We have 2400 tons of
11 ready-mix, 400 tons of dry powder, for a total of
12 2800 plus tons with a hundred and seventy --

13 A. Eight.

14 Q. -- eight tons of asbestos, correct?

15 A. Appears to be.

16 Q. And in '76, we have 9700 plus tons of
17 product on 252 tons of asbestos; and in '77 we have
18 13,600 tons of product on 492 tons of asbestos,
19 correct?

20 A. Correct.

21 Q. All right. We have covered a lot of
22 ground there. Does this appear to be a pretty
23 comprehensive index of the facilities that made Paco
24 products, and the years that each of those
25 facilities was in business, and the products they

1 they're supposed to go. So, either somebody copied
2 this off the bag, or it was done the other way
3 around. Instructions were written, and then they
4 were printed onto the bag.

5 Q. Okay.

6 A. There's some more? Okay. I didn't look
7 at those.

8 Q. So, this would reflect instructions on how
9 to use the Ready-mix All Purpose Joint Compound?

10 A. It's for Taping Compound, Finishing
11 Compound, Topping Compound, and Joint Compound, All
12 Purpose.

13 Q. Okay.

14 A. Now, I would like to point out --

15 Q. Yes, sir.

16 A. -- from my experience, when directions are
17 put together, they're put together as it relates to
18 the product. Then the other things that have to be
19 added, based on government requirements, or state
20 requirements, generally are added when the bags are
21 printed. So, this may not -- I don't know when this
22 was typed up, but generally this covers what would
23 have been prepared regarding the product itself as
24 far as the application.

25 Q. Okay. Did -- did Kelly-Moore ever go back

1 and restencil additional information on any of their
2 bags, additional logos, labels, anything else?
3 Anything that would have been added to the bags
4 after they came from Saint Regis?

5 MR. HAZEN: Objection, form.

6 A. Not that I'm aware of. The only thing
7 where stickers were added was when the OSHA
8 requirements came out. In order to comply, a
9 sticker was made up and put on the bags until the
10 bags were printed with that on there.

11 Q. (By Mr. Coon) Okay.

12 A. But I am not aware that any other
13 modification was made to the bags.

14 Q. Okay. I have got another document here.
15 This is a 1018.

16 MR. HAZEN: Is that your number?

17 MR. COON: Our number. It's
18 previously marked KM 94 by somebody.

19 Q. (By Mr. Coon) But can you identify that
20 set of records there, sir?

21 A. This appears to be a listing of various
22 raw materials that were purchased from different
23 companies, and it's headed "Paco Products" so I'm
24 assuming it has to relate to Paco products.

25 Q. Would it have been the different vendors

1 the raw ingredients.

2 A. Yes. I was just trying -- oh, there they
3 are. I was just trying to look further. That's
4 what it appears to be.

5 Q. Okay. And if we looked under the pigments
6 and fillers, this was at Page 2 of the document,
7 when it talks about pigments and fillers, we have
8 different ingredients. You have the limestone,
9 ground styrene, and it talks about Mica, and then
10 there is two listings here, 7RF02 asbestos,
11 Johns-Manville, and another is 7M05 asbestos,
12 Johns-Manville.

13 A. Right.

14 Q. Do you know what those codings meant? Was
15 that a quality or grading of the product?

16 A. I believe, and, again, I am not a chemist,
17 I didn't -- but I believe the 7RF is what they
18 called a float, and the one without the RF on it was
19 a basic Chrysotile. Both of these were Chrysotile,
20 but this was what's called a float. It's a little
21 bit different fiber. Don't ask me how to explain
22 it. It's processed through water from what I
23 understand.

24 Q. Okay. Would this have reflected that both
25 types of asbestos would have been used in the Paco

1 or suppliers of the raw ingredients that --

2 A. Of the raw materials.

3 Q. Of the raw materials you used to make the
4 different Paco products?

5 A. Correct.

6 MR. NANTZ: Objection, form.

7 Q. (By Mr. Coon) And it actually goes back
8 to -- I think one page is even you have St. Regis.
9 That would have been your bag supplier?

10 A. I mentioned St. Regis earlier. That's the
11 bag supplier that serviced San Carlos and there
12 could have been maybe somebody else different in
13 some of the other plants, but St. Regis was, I
14 believe, the -- one of the key suppliers of San
15 Carlos.

16 Q. Now, the bagging processes all took place
17 at the manufacturing facility, correct?

18 A. Yes.

19 Q. Okay. You-all didn't ship -- you-all
20 didn't mix it all up and make the product and then
21 ship it somewhere else to have it bagged?

22 A. No, it was the other way around. The bags
23 were made, shipped to us and we filled them.

24 Q. Okay. Anything else about that? That's
25 just kind of a listing of the various suppliers of

1 textures, or were they picked from one or the other
2 on various Paco products?

3 A. I'm not sure I understand your question.

4 MR. HAZEN: Objection, form.

5 Q. (By Mr. Coon) Okay. Are the things that
6 are listed on here as ingredients -- are all these
7 ingredients what went into the Paco product, or did
8 some go in some products, some go into others?

9 A. I have to believe not all these went into
10 any one product. I think since the products were
11 used for different uses, for different purposes,
12 that this was the total list of raw materials at
13 that time for the Paco products.

14 Q. Okay. And this is chopped off. It looks
15 like December of --

16 A. '75.

17 Q. -- '75?

18 A. By the second page.

19 Q. There we go. December of '75?

20 A. Right.

21 Q. So, it appears, at least at this time
22 frame, you told us about the three suppliers as
23 being of the raw material asbestos, Manville was one
24 of them, and it appears from this form that for
25 1975, at this particular facility, at least during

1 that time frame, Manville was the supplier of the
2 asbestos for the Paco products?

3 A. He's listed on there, yes.

4 Q. Okay.

5 A. But what you need to understand also, if I
6 may interject, these types of lists were made up
7 periodically throughout the year, so that we always
8 had a record of raw material suppliers.

9 Q. Okay.

10 A. So when this one was made in 12 of '75, it
11 reflected that Johns-Manville was the supplier; but
12 there could have been a list that was six months
13 before that, or the one that's 12 of '74 could have
14 had a different supplier.

15 Q. Sure. It could have been Carey Canada?

16 MR. NANTZ: Objection to form.

17 A. Could have been.

18 Q. (By Mr. Coon) Mr. Giffins, did -- I might
19 have asked you this, but did Sherwin-Williams make
20 any joint compounds or textures?

21 A. Not that I know of when I was with them.

22 Q. Okay, sir. And that would have been from
23 '60s through '85?

24 A. I went to work for them in '61 and left
25 them in '85.

1 Q. All right. And in the time frame of the
2 '60s, this is before you went to work at
3 Kelly-Moore, but do you have an understanding today
4 of who the competitors were in the Paco product
5 lines with Kelly-Moore through the '60s and '70s?

6 A. Man. Any name I would give you would be
7 speculation on the -- on the names that I am
8 familiar with. I am very -- you know, Hamilton,
9 been around for a long time. In the bay area, there
10 was a company called Westco that made material.
11 Geez, there is a lot of names that escape me at the
12 moment, but to tie it into specific dates, that's --
13 or time frames, that's a little tough.

14 Q. Okay. Have you heard of a company called
15 Proco?

16 A. Oh, sure. Yeah, I'm sorry.

17 Q. Would they have been a competitor?

18 A. They have been, yes.

19 Q. Synkoloid?

20 A. Synkoloid is more in patching, I believe.

21 Q. Georgia Pacific, which I think you-all
22 actually sold some rebranded stuff to, correct?

23 A. Correct.

24 Q. National Gypsum, are you -- U.S. Gypsum?

25 A. That's the -- that's the one that bought

1 Westco, yes. Thank you.

2 Q. Any other ones come to mind?

3 A. Drawing a blank.

4 Q. Okay. Mr. Giffins, I want to next turn --
5 we have covered a lot of information with respect to
6 the various manufacturing facilities, and the
7 products that Kelly-Moore made that -- that had
8 asbestos in them, and I realize that at some point
9 in time after OSHA came out, Kelly-Moore took some
10 actions with respect to their products, but instead
11 of going through them ad hoc, I want to go back and
12 take a separate trail with you now, sir, and that is
13 what I call generally the internal corporate
14 information upon what Kelly-Moore did, and when they
15 did it, and why they did it with respect to
16 asbestos.

17 And there were a number of boxes that
18 Kelly-Moore's produced to us, in addition to some
19 other information that we have obtained from some
20 other sources, all of which I think originated from
21 Kelly-Moore. But I want to walk you through them
22 and just ask you if you have seen the documents
23 before, and if you know anything about them, and
24 maybe ask questions for you.

25 I have tried to take most of these in

1 chronological order. And in going through the
2 boxes, when we had basically asked for information
3 concerning Kelly-Moore's asbestos products, and
4 internal documents concerning their discussion with
5 asbestos, the vast majority of the documents I have
6 received, or at least been able to review, were
7 generated after 1972, or at least after the first of
8 the year in '72. In that regard, I want to first
9 ask you about documents before '72. And you are not
10 employed with Kelly-Moore until '85, correct?

11 A. That is correct.

12 Q. Have you ever been involved in
13 assimilating information on behalf of Kelly-Moore
14 responsive to the asbestos litigation?

15 MR. HAZEN: Objection, form.

16 A. What do you mean, assimilating?

17 Q. (By Mr. Coon) Well --

18 A. Actually collect -- going out and
19 collecting it?

20 Q. Sure. Have you ever been one of the
21 persons that was contacted by Kelly-Moore at some
22 level saying, can you help us get this information?
23 This is what the attorneys have asked for, this is
24 what somebody has asked for, and we need you to try
25 to round this type of information up?

1 A. I have not. It wasn't until April of 2001
2 when I got the call and asked to get involved with
3 this, the first time I was aware of all that was
4 going on, and I was never involved with actually
5 going around, picking up documents, and putting it
6 together.

7 Q. And in the years prior to 2001 you had not
8 been asked to just assimilate information, not to be
9 the corporate representative, but just to assimilate
10 information for somebody else who may be the
11 corporate representative?

12 A. Prior to April of 2001, my knowledge of
13 the as -- Paco and the asbestos issue would output
14 on the tip of a pin.

15 Q. Well, basically you didn't go to work
16 there until a number of years until after most of
17 the Paco product lines had already been shut down?

18 A. That's correct.

19 Q. And so, you, here today to be the
20 corporate representative to discuss a lot of these
21 issues, had to go back and look at historical
22 information and talk to people?

23 A. (Indicating.)

24 Q. And I think you have done that, right?

25 A. Oh, yes, sir.

1 information started to come out regarding the
2 asbestos. All the information from OSHA began to
3 really start to surface, and all the other
4 information. So, materials that I was looking at,
5 was related to when the company was -- got involved.
6 Anything I have seen is related to around that
7 period forward.

8 Q. (By Mr. Coon) Okay. With respect to the
9 product lines, we know that Kelly-Moore made
10 asbestos-containing products going back to, I think,
11 1960, correct?

12 A. Correct.

13 Q. From that standpoint, let me ask you first
14 a separate line of questions before we get into
15 documents. Do you know any -- from your talks with
16 Kelly-Moore representatives -- you have talked to
17 Mr. Merrill, correct?

18 A. I have, sir.

19 Q. Talked to a number of the other people
20 that were there back when. Were you ever able to
21 determine that Kelly-Moore had done any types of
22 testing of the Paco product lines before they
23 released them into the stream of commerce?

24 MR. HAZEN: Objection, form.

25 A. What do you mean by testing?

1 Q. Talked to a number of people that worked
2 there back in the old days even before you were
3 there, and looked at a lot of these documents that
4 Kelly-Moore had in their repository?

5 A. I have gone through every box in that
6 repository, and you're welcome to do it, too.

7 Q. How many boxes are there in the
8 repository?

9 A. 88.

10 Q. 88 boxes?

11 A. Roughly 88.

12 Q. And where are these additional records
13 kept? In San Carlos?

14 A. At San Carlos, yes, sir.

15 Q. Are they kept in a particular room that
16 just deals with these issues, or is it part of a
17 larger repository of all their information?

18 A. It's in a room that's partitioned off and
19 it only contains documents relevant to this issue.

20 Q. Okay. In your reviews of that information
21 before, did you see much in terms of the
22 correspondence, internal memos and letters dealing
23 with these issues prior to 1972?

24 MR. HAZEN: Objection, form.

25 A. No, because it wasn't until '72 that the

1 Q. (By Mr. Coon) Okay. Testing with respect
2 to any potential health hazards associated with
3 asbestos in those products.

4 A. We did testing of the product, primarily
5 the application of the product, how it went on, that
6 type of deal.

7 Q. Had to do with viscosity, making sure it
8 adhered right, making sure it didn't crack and peel
9 and chip?

10 A. Uh-huh.

11 Q. Just in terms of it being a product that
12 did what you said it would do?

13 A. That's correct, sir.

14 Q. Okay. With respect to potential health
15 hazards, are you aware of any testing that was done
16 by Kelly-Moore in the early years of their making of
17 this Paco product line, as it related to any
18 potential health hazards with asbestos?

19 MR. HAZEN: Objection, form.

20 A. Could you help me out, and maybe give me a
21 little bit idea on what kind -- I mean, what do you
22 mean testing with health?

23 Q. (By Mr. Coon) Well, sure. Did they do
24 anything to determine, for instance, in stirring up
25 the boxes, or the bags of asbestos-containing --

1 Let me back up. Let's talk about just the
2 textures.

3 A. Okay.

4 Q. And you had 25-pounds bags of it, right,
5 powder form?

6 A. Correct.

7 Q. And you could add water and stir it up.
8 Do you know if Kelly-Moore ever did any dust testing
9 to see how much asbestos dust, or dust was released
10 from the dumping of the bag into a bucket, adding
11 water and stirring it all up?

12 A. You have got to be talking about once it
13 got in the user's hands? It would have to --

14 Q. At any point. Even -- in the plant we can
15 talk separately about two different issues. You're
16 probably familiar with the difference between field
17 studies versus plant studies.

18 A. Correct.

19 Q. Okay. Let's talk about first the field
20 studies. Just with making the product, were there
21 any tests done at any point in time from 1960 when
22 they made the product until -- when was it they
23 quit? The late '70s?

24 A. Making it with asbestos?

25 Q. Yes, sir.

1 That doesn't indicate that something hadn't been
2 done.

3 Q. With respect to the asbestos in the
4 products, and your review of the records, and
5 talking to anyone about this matter, do you have a
6 feel for when it was that Kelly-Moore was first
7 aware of -- let's talk about just diseases first --
8 was first aware of the disease of asbestosis?

9 A. The first documentation that I have seen
10 that anything came to the table on diseases was in
11 the spring of '72 when the Asbestos Institute sent a
12 letter to Mr. Merrill, I believe, it was either
13 Mr. Merrill or Bob Miller saying that a certain
14 survey had been conducted, and that there were some
15 indications that exposure to dust over a long period
16 of time could cause some health problems. And that
17 was in the spring of '72, and that's the first thing
18 I have seen that was any indication from a medical
19 standpoint that there was a problem with asbestos.

20 Q. Was --

21 A. Where actually --excuse me, where the
22 diseases were mentioned, sir.

23 Q. Right.

24 A. Where there was a --

25 Q. Do you have an understanding as to whether

1 A. '77.

2 Q. '77. Okay. From the 1960 to 1977 time
3 frame, was there any information you were able to
4 determine where Kelly-Moore did any testing of the
5 product in a field circumstance to determine the
6 dust release and asbestos release in that dust?

7 A. I am not aware of what they did then,
8 although I can tell you what we do today, I think,
9 was basically how things were done then, and that's
10 where two -- two aspects, two things happened.

11 One, when the product is made, it's always
12 tested as far as the application and the performance
13 of the product. And it's always geared to the
14 painting contractor, and how that professional is
15 going to use the product. We do that today, and I
16 believe that was done back in those days. Was that
17 philosophy still applied to Paco? I -- it's part of
18 our daily operating procedure so I would assume
19 maybe it was.

20 There were times where you would go out, and
21 take the product and go out on the job site, and
22 actually mix it so that we get a feel for that type
23 of thing. As far as tests, doing a measurement of
24 how much dust was emitted from the material, I have
25 not seen anything that says that, but I don't know.

1 or not Kelly-Moore was what you call a subscriber to
2 workers' compensation in Texas back in the '60s and
3 '70s?

4 A. What do you mean, subscriber?

5 Q. Did they have workers' comp coverage for
6 their employees?

7 A. As far as I know we did. Again, it's an
8 assumption but, I mean, we do now.

9 Q. Okay. Any reason to believe that they did
10 not have workers' comp in your earlier days?

11 A. Not if it was a requirement, no.

12 Q. Okay. Well, I think an employer has the
13 option of getting workers' comp for their employees.
14 You don't know one way or another if they had
15 workers's comp?

16 A. I can't answer that.

17 Q. Do you know whether or not, with respect
18 to the California facilities, whether or not the
19 employees were covered with workers' comp?

20 A. At what time period?

21 Q. In the '60s.

22 A. Well, again, I didn't come until '85, so
23 from my own personal experience, but I -- I don't
24 know for a fact if it did or it didn't. I do know
25 that there is only indication of one workman's comp

1 claim that came out of the San Carlos factory, and
2 that was in 1981. So -- and that person was working
3 in the plant for years prior to that.

4 Q. Okay. And I was going to ask you two
5 different lines of questions on that and you brought
6 up the second line. The first line was when you
7 were aware, or from -- there is probably a
8 difference between when you were personally aware
9 versus when you believe the corporation was aware,
10 but that Texas under its workers' compensation
11 prior to the time that Kelly-Moore acquired the Paco
12 product lines, that under Texas law, that you could
13 have a recognized disease of asbestosis, which was
14 compensable under the worker's compensation
15 statutes?

16 MR. HAZEN: Object.

17 Q. (By Mr. Coon) Do you know -- do you know
18 when Kelly-Moore would have been aware of that?

19 MR. HAZEN: Objection, form.

20 A. No, I do not.

21 Q. (By Mr. Coon) And the same thing with
22 respect to California. Do you know -- have any
23 understanding of when Kelly-Moore was aware that the
24 California workers' compensation statutes provided
25 for the compensability of occupational dust disease

1 record. The time is 4:21 p.m., May 31st, 2002,
2 beginning of Tape 3.

3 Q. (By Mr. Coon) Mr. Giffins, I want to go
4 back to just a couple other things. We have here --
5 and unfortunately it's not even identified with a KM
6 number. It's an attachment to a set of
7 interrogatories.

8 Counsel, show you as Exhibit "A" to the
9 attached set, but Kelly-Moore had filed answers to
10 discovery before. You're familiar with
11 interrogatories, questionnaires you fill out, file
12 with the court?

13 A. Yes.

14 Q. This was an Exhibit "A" attachment to a
15 set that had been filed, and listed are a number of
16 the product lines that Paco made that had asbestos,
17 and it lists the years that those products were made
18 as well as the years asbestos was discontinued in
19 them. Have you seen that before?

20 A. I do not -- I don't recall seeing this
21 particular sheet, but I have seen something similar
22 to this, which lays out similar information, but in
23 a little bit different format.

24 Q. Okay. Kind of shows you -- if we look at
25 that it would tell us basically the composition of

1 like asbestosis?

2 MR. HAZEN: Objection, form.

3 A. No, I don't know when that fit into
4 workmen's comp. We do all -- we -- all of us know,
5 I believe, that OSHA was promulgated back in '70,
6 published in '71, and was about that time OSHA,
7 which regulated the workplace, indicated -- was
8 coming out with dust controls.

9 Now, if workmen's comp was prior to that, I
10 don't know that, sir. I really don't. I assume it
11 came after that as it related to that, because
12 that's when the whole thing about asbestos started
13 to come forward.

14 Q. (By Mr. Coon) Okay.

15 A. So, I assume it would have been after
16 '70.

17 THE VIDEOGRAPHER: Excuse me. Can
18 we go off the record for a tape change?

19 MR. COON: Sure.

20 MR. HAZEN: Why don't we just take
21 five?

22 THE VIDEOGRAPHER: Going off the
23 record at 4:09.

24 (A recess was taken.)

25 THE VIDEOGRAPHER: Back on the

1 asbestos over the various years from the time it was
2 fully used in the product until the time it was
3 excluded from the product, correct? As well as
4 dates of manufacture, and dates asbestos was
5 excluded?

6 A. It shows on market, and the use of when
7 asbestos was -- the date when use of asbestos was
8 discontinued, and it does show the amount of
9 asbestos per product line.

10 Q. Okay.

11 A. How it varied, so forth, right.

12 Q. Okay. If we can just -- I tell you what,
13 I'll just draw in the bottom here that this was
14 Exhibit "A" to interrogatory. We will use that for
15 purposes of identification on the attachment. Okay?

16 All right. We were talking about from a
17 historical context your review of Kelly-Moore's
18 archives, and things, what they knew about asbestos,
19 and you brought up -- we were talking about testing
20 for asbestos dust, and you brought up a worker's
21 compensation claim, and could you tell me --

22 A. Before we --

23 Q. -- a little more about that?

24 A. Before we do that, can I go back? I want
25 to clar -- I think I need a clarification, or we do

1 here.

2 Q. Sure.

3 A. When you asked me about testing --

4 Q. Yes, sir.

5 A. -- for some reason, I kept -- I was
6 responding to you in the time frame prior to OSHA,
7 which was '70, '71.

8 Q. Right.

9 A. I thought that was what your question was.

10 Q. Okay. We can make it that if you need to
11 clarify it. Prior to the OSHA Regulations, was any
12 testing done by Kelly-Moore of the atmospheric
13 release of asbestos on their products?

14 A. No.

15 Q. Okay.

16 A. Not that I'm aware of.

17 Q. Okay.

18 A. Because there was testing done after that
19 point.

20 Q. Sure.

21 A. But, again, from that time frame, I was
22 thinking in terms that you were asking me prior to
23 OSHA or prior to --

24 Q. Right.

25 A. -- the regulation.

1 information, but in looking at it, it indicated that
2 there were three occupational facilities -- three
3 occupational injuries at that facility. And then
4 there was one, looks like Item Number 22, one for
5 dust disease to the lungs, and there was one claim
6 at the facility that year as well. Am I reading
7 that correct right here in Line 22?

8 A. It says, "Dust diseases of the lungs, one,
9 number of cases involved permanent transfer, one;
10 number of lost workdays, one."

11 Q. Do you have any idea what that related to?

12 A. No. It says Paco factory in 1974. I'm
13 familiar with the form but I'm not familiar with
14 this particular one here.

15 Q. What would the Paco factory be, since we
16 know that there were several different Paco
17 factories? Do you know which Paco factory that was?

18 A. No. It's an OSHA form, and -- but I can't
19 -- it's no way to tell which factory it is, sir.

20 Q. And it indicates that there was a claim
21 for what's called pneumoconiosis. You're aware that
22 asbestosis is a type of pneumoconiosis?

23 A. Yes, sir.

24 Q. Just -- it is a dust disease?

25 A. Yes, sir.

1 Q. We will talk about that.

2 A. Okay.

3 Q. One other side-note, you had brought up an
4 issue about a worker's compensation claim?

5 A. Yes, sir.

6 Q. As I understood it, you were aware of an
7 employee of Kelly-Moore making a claim for
8 asbestos-related health problems back around '80,
9 '81?

10 A. The claim goes back, it was filed in '81,
11 yes.

12 Q. Okay. Is that the only one that you were
13 aware of filed prior to 1980 that dealt with an
14 employee of a facility alleging some health related
15 problems from working around asbestos?

16 A. A workman's comp claim?

17 Q. Yes, sir.

18 A. That is the only one, yes, sir.

19 Q. I have got -- counsel, this is our
20 Document 1145, BB 6497 -- this was a summary sheet
21 included in our forms that talk about the Paco
22 factories, 1974. Have you seen that before?

23 A. I have seen a form similar to this, yes.
24 I don't know if it was this.

25 Q. Well, it doesn't provide a lot of

1 Q. But you do not know from this, or from any
2 other information, whether or not that individual
3 had a specific claim for an asbestosis injury, or
4 some other form of dust disease there in the plant?

5 A. No. I do not.

6 Q. Okay. Do you know if there were any other
7 claims by any employees prior to 1980 for an injury
8 associated with what I'll call more generically just
9 occupational dust disease or pneumoconiosis versus a
10 claim for asbestosis?

11 A. I am not aware of any -- the only
12 workmen's comp information that I have seen relevant
13 to any disease, or any issue such as this, was that
14 one that was filed in 1981.

15 Q. Okay. Now, with respect to things other
16 than asbestosis, you're familiar that asbestosis
17 also causes other health-related problems such as
18 lung cancer? You're aware of that, are you not?

19 A. Well, I guess it could. I see them as
20 three different issues, or two different issues,
21 lungs cancer and asbestosis being different.

22 Q. Sure. But you understand asbestos,
23 exposure to asbestos fibers can cause lung cancer?

24 A. I understand that could be, that could
25 happen, yes.

1 Q. Okay. Now, with respect to lung cancer,
2 are you aware of any of your employees at
3 Kelly-Moore, at any of these Paco facilities, making
4 a claim for workers' compensation benefits for a
5 diagnosis of lung cancer as opposed to asbestosis?

6 MR. HAZEN: At any time? I am just
7 trying to clarify.

8 Q. (By Mr. Coon) I'm sorry, before 1980. You
9 have told us you were aware of just this one claim
10 in 1981 for asbestosis, correct?

11 A. Right.

12 Q. And we know --

13 A. Again, it was a workman's comp claim and
14 I'm not sure it was asbestosis, but I'm aware that
15 there was that one workman's comp claim in '81.

16 Q. Okay. I'm sorry, maybe I misunderstood.
17 Was the claim in '81 for just a claim for exposure
18 to asbestos, or was it a claim for asbestosis, or
19 was it a lung cancer, or do you know?

20 A. No, it was a claim by a gentleman by the
21 name of Waller Lawrence, who had worked in the Paco
22 plant for sometime prior to that, for payment of
23 around -- an \$806, \$800 of his medical bills. And
24 the prognosis, the final determination that came
25 back from the doctor was that he did not have any

1 that can cause mesothelioma?

2 A. Well, I -- to me on mesothelioma, asbestos
3 can cause -- it's a fatal disease, but -- and I am
4 no medical doctor, for say.

5 Q. Sure.

6 A. And I'm not -- but I also, you understand,
7 you can get that without being exposed to
8 asbestosis.

9 Q. Do you have an understanding of what else
10 can cause mesothelioma --

11 A. No.

12 Q. -- other asbestos fibers?

13 A. I do not.

14 Q. Okay. Do you know whether or not you have
15 had any employees who have been diagnosed with
16 mesothelioma?

17 A. I do not.

18 Q. Do you know whether or not you had any
19 employees -- when I say employees, I am talking
20 about ones that worked around any of your asbestos
21 facilities like the Paco facilities -- do you know
22 whether or not any of them have suffered a diagnosis
23 of a lung cancer?

24 A. Again, no. I -- again, the only thing I
25 have ever seen is that deal from 1981.

1 asbestos-related disease.

2 Q. Okay. So -- and that was in 1980, or
3 '81?

4 A. That was '81, sir.

5 Q. And that's the first instance you're aware
6 of somebody thinking they may have some asbestos
7 related health problems from working around the
8 product at the plant?

9 A. That's the only workmen's comp one that I
10 have seen, yes, sir.

11 Q. Okay. Are you aware of anyone prior to
12 that time having a claim for something that could be
13 more generic like lung cancer, from just working at
14 the plant?

15 A. No. I have not.

16 Q. Are you familiar with a term called
17 mesothelioma?

18 A. Yes, sir.

19 Q. Are you familiar that that's also another
20 highly associated cancer from working around
21 asbestos fibers?

22 A. Mesothelioma can be caused by asbestos,
23 but it also, I believe, can also be caused by other
24 things.

25 Q. What's your understanding of other things

1 Q. Okay. And post '81, is that one in '81
2 the only one you have seen, or was that the first
3 one you have seen?

4 A. That's the only workmen's comp claim that
5 I have seen.

6 Q. Okay. Who handles the workers'
7 compensation issues at Kelly-Moore? Do those get
8 funneled through somewhere at -- in California or
9 Hurst or both or what?

10 MR. HAZEN: Objection, form.

11 A. They're usually funneled -- I think they
12 all end up in our personnel department --

13 Q. (By Mr. Coon) Where is that at?

14 A. -- at some point. In San Carlos.

15 Q. It's in San Carlos? Is there a separate
16 repository where people track the injury claims from
17 people that work out at Kelly-Moore?

18 MR. HAZEN: Objection, form.

19 Q. (By Mr. Coon) Is it just a different
20 department from other departments or is it where
21 they handle all of the financial issues, and --

22 A. Well, I can't answer that because --
23 medical records are confidential and, so, therefore,
24 I don't know how they end up. I do know that our
25 personnel department generally will get involved

1 where we have an issue with the workmen's comp claim
2 or something, but where all those records are, I
3 can't tell you for a fact.

4 Q. Okay. All right. We were talking about
5 from the historical standpoint when it was your
6 understanding that Kelly-Moore first had an
7 awareness of asbestos diseases, and I want to first
8 ask you, you were telling us about OSHA being in the
9 early '70s, the entity that created a heightened
10 awareness at Kelly-Moore with respect to these
11 potential problems. Is that generally what you were
12 saying?

13 A. I -- that's when I think we -- we started
14 to get -- being aware of it but I don't think we
15 were the only ones. I think the industry as a whole
16 became more aware of asbestos in the early '70s.

17 Q. Was there an organization that dealt with
18 joint compounds and textured materials? Was there a
19 Drywall Manufacturers Association or something?

20 A. Well, there probably was.

21 Q. Do you know if there still exists any such
22 type of organization?

23 A. I can't really say that.

24 Q. Do you know whether or not Kelly-Moore was
25 a member of any organizations that dealt with these

1 called again?

2 A. The Dry -- Drywall Institute Trust Fund.

3 Q. Okay. And what do you know about that
4 organization?

5 A. That's an organization that basically what
6 -- how do I put it? It was almost like a clearing
7 house for drywall information, and they provided
8 some information to us, or we got some information
9 from them back in '82 relevant to what is starting
10 to develop with asbestos.

11 Q. Do you know how long that organization had
12 been in existence?

13 A. I can't answer that.

14 Q. Do you know how long Kelly-Moore had been
15 a member of that organization?

16 A. I don't ever think we were a member.

17 Q. You just think you-all provided
18 information from them, although you were not a
19 member?

20 A. I think we may have gotten the information
21 because of one of raw material suppliers may have
22 requested they send it to us or whatever, but --

23 Q. Okay.

24 A. But I don't believe we were ever a member.

25 Q. Okay. I don't have some documents here

1 specific product lines they made like the drywalls,
2 texturing products?

3 A. I have not seen anything that would
4 indicate that we were members, or associated with
5 any association in the drywall industry.
6 Information was available to us through various
7 organizations, but I don't -- haven't seen anything
8 where we were an active member of any organization,
9 or -- there is a couple organizations from the paint
10 side that we are involved with that goes back to
11 mid, late '70s. There is only one or two, but as a
12 whole, they're the only ones I can recall ever
13 seeing.

14 Q. You mentioned earlier the -- you said the
15 AI was -- Asbestos Institute, I think, is that the
16 Asbestos Institute of America?

17 A. Oh, the --

18 Q. The AIA?

19 A. I'm drawing a mental blank. The Asbestos
20 Institute Trust Fund, I believe is the head -- is
21 the clarification.

22 MR. HAZEN: Drywall.

23 A. Drywall, yes, excuse me. I'm sorry.

24 Thank you.

25 Q. (By Mr. Coon) Okay. Now, what's that

1 that I have reason to believe are in existence. I
2 don't know if Kelly-Moore has seen them but I have
3 seen them in other circumstances, but one of your
4 raw material providers was Johns-Manville, correct?

5 A. Johns-Manville, yes.

6 Q. And you mentioned a couple others, I think
7 Carey Canada?

8 A. Carey Canadian.

9 Q. And Union Carbide?

10 A. That's correct.

11 Q. Did any of those companies ever provide to
12 Kelly-Moore, prior to OSHA, let's talk pre '72, did
13 any of them ever provide Kelly-Moore with any
14 information regarding potential health hazards
15 associated with exposure to asbestos?

16 MR. NANTZ: Objection, form.

17 A. Did I hear something?

18 MR. HAZEN: Go ahead. You can
19 answer.

20 A. Oh, okay. Prior to '72?

21 Q. (By Mr. Coon) Yes, sir.

22 A. So you would have said '71 prior?

23 Q. Yes, sir.

24 A. No. I haven't seen anything.

25 Q. Okay. Are you familiar with material

1 safety data sheets?

2 A. Uh-huh.

3 Q. Does Kelly-Moore have those for the Paco
4 product lines?

5 A. Would we have made those up and supplied
6 MSDS sheets?

7 Q. Yes, sir.

8 A. You know, I can't answer that. It's a
9 good question. I can't answer that.

10 Q. If such documents had existed, where would
11 they be kept?

12 A. MSDS sheets became a requirement, a
13 federal requirement at one point. I don't know what
14 year that was. So I am sure we would have done it,
15 but I -- I just -- I can't recall when that would
16 have happened.

17 Q. I am going to backtrack one more time.
18 There was another document I found at the break.
19 Counsel, this one is KMX 183. It's ours KM 1239.
20 We talked about these different Paco products
21 containing asbestos, and there was a memo here. See
22 if you have seen this. It was to Mr. Merrill, which
23 you talked about earlier, that talked about asbestos
24 fibers in a paint product. And were you aware that
25 Kelly-Moore had made paints containing asbestos for

1 different numbers were applied to those. This --
2 here it is right here. You look at it, Paco
3 products, right here.

4 Q. Okay. And what are those? Paco product
5 225, 235 and 521?

6 A. I am not totally familiar with those.
7 They obviously were very small volume.

8 Q. Do we know what they looked like?

9 A. I have no idea.

10 Q. Do you know why they would have included
11 paint with asbestos?

12 A. Well, again, it goes back to even that
13 terminology of that one dry product. It was called,
14 I believe, texture paint. Right?

15 Q. Right.

16 A. And that was dry. So anything that would
17 be put on with an applicator other than a spray
18 unit, or a trowel, it could be applied with a brush,
19 or textured with a brush, they -- my -- it looks
20 like they called paint.

21 Q. It indicates -- I think we read it here it
22 came in one, three or five-gallon?

23 A. It looks like one and five gallon pails.

24 Q. One and five gallon pails?

25 A. Right.

1 a -- I think it's about a five-year time frame?
2 Wasn't it '63 to '68?

3 A. I don't know -- see, these could be the
4 products that were -- there was a texture paint that
5 asbestos was also used in, and I don't know if that
6 was -- is any of these. I think some of these
7 numbers are, I think, from that Paco list.

8 Q. You think that those were made -- you
9 talking about the texture paint that we talked about
10 in this earlier document?

11 A. There was a dry powder, and then I believe
12 there was also a liquid.

13 Q. Okay. They have -- well, maybe I didn't
14 understand. You think there was a liquid texture
15 paint as well as the powder that we talked about in
16 the bag?

17 A. Texture paints were part of the industry
18 for many years in the early '70s. Not just
19 Kelly-Moore but these numbers, I -- I -- these look
20 like they're Paco numbers. You have that sheet that
21 showed the cross-reference? Oh, here we go.

22 This doesn't have the numbers on it.

23 Q. The texture paint is 5563.

24 A. Yeah, but it was also identified -- that
25 was what's on the bag, but there is a different --

1 Q. Okay.

2 A. These are Paco products.

3 Q. So those would have been under Paco?

4 A. Yes, sir.

5 Q. Okay. Going back to your product
6 suppliers, you're not aware of Manville or Carey
7 Canadian or Union Carbide providing any types of
8 notices to Kelly-Moore of any health-related
9 information concerning the raw asbestos they
10 provided, at least before '71?

11 MR. NANTZ: Objection, form.

12 A. I am not aware that any information was
13 provided to Kelly-Moore prior to '71.

14 Q. (By Mr. Coon) And in '71 did either or
15 any of those three companies start providing
16 information, or were you still using it as their
17 time line?

18 MR. NANTZ: Objection, form.

19 A. If you get into '72, I can answer your
20 question.

21 Q. (By Mr. Coon) Okay. Let's go to '72.

22 A. Anything '71 and prior, no.

23 Q. Okay. '72, any information from any of
24 the material providers?

25 A. We had that letter, as I indicated, from

1 the Drywall Institute, and then in '73 Mr. Merrill
2 attended a Johns-Manville -- Johns-Manville seminar,
3 and whereby health issues and asbestos were
4 discussed, and then in '72 we had information from
5 our Liberty Mutual, who did the inspections on our
6 plant, and in one of their reports, they mentioned
7 in their detailed report about the aspects of the
8 diseases that asbestos could cause.

9 So, around '72 is when all this information --
10 '72 and then into '73 is when it started to surface.

11 Q. Okay. If we go back here. I have got
12 January of '72 -- we have got a number of documents
13 here I am going to try run through here pretty
14 quickly with you, sir, but we have got 1058. This
15 was a letter to Mr. Merrill from the vice president
16 of sales at Carey Canadian and it attached with it
17 the EPA proposed regulations dealing with asbestos.
18 You're familiar with those, are you not?

19 A. Yes, sir.

20 Q. And that's kind of what you were talking
21 about awhile ago, that OSHA was coming in, and that
22 was part of the EPA project to start restricting or
23 controlling the -- the dust released from asbestos?

24 A. Yeah, OSHA controlled the workplace.

25 Q. And in the OSHA or EPA's desire to protect

1 looking at other fibers as a replacement for their
2 asbestos, and to look at eliminating asbestos as a
3 raw material in their formulations, correct?

4 A. It says, "In view of the hard look that is
5 being taken at asbestos, we have started to look at
6 other fibers as replacement." Yes, that is correct.
7 And this is February of '72.

8 Q. Okay. And what did Kelly-Moore do
9 following that memo with respect to following up
10 with the recommendations made?

11 A. Recommendations as to what?

12 Q. Recommendations made by Mr. Murphy with
13 respect to looking for substitutes for asbestos and
14 eliminating it in their formulations.

15 A. Based on the information I have seen,
16 there was a very concentrated effort to begin to
17 look for substitutes. A lot of different aspects
18 were looked at. In fact, Mr. Merrill, who was the
19 chemist at the time, or was involved with the
20 chemistry of putting the products together between
21 '72 and '77, actually worked on around 236 different
22 formulas to revise those products.

23 Q. And when did products first become revised
24 as a result of this additional research?

25 A. Well, the first one was in '73, when we

1 the levels of dust in the workplace, that would
2 concomitantly result in the ability to continue to
3 make the product based on keeping the dust counts
4 low enough in the factory to make the product?

5 A. OSHA set requirements as to what were
6 acceptable airborne contents, yes.

7 Q. Okay. And we know at least as to '72 that
8 the manufacturers were trying to keep Kelly-Moore
9 abreast with respect to ongoing developments with
10 respect to the potential for regula -- federal
11 regulation of asbestos?

12 A. (Indicating.)

13 Q. Correct?

14 A. Can I see this?

15 Q. Sure.

16 A. Sure. This is the letter to Mr. Merrill
17 dated January the 24th, 1972, indicating that he was
18 attaching the federal register regulations for
19 proposed standards, and advising us that there was a
20 hearing slated for a certain date.

21 Q. Okay. And shortly after that, we have
22 1022. We have a letter dated February of '72 from
23 Dan Murphy at Paco to Mr. Merrill and other
24 Kelly-Moore representatives that states at Page 2,
25 that due to those issues Kelly-Moore needed to start

1 came out with the asbestos-free wall texture.

2 Q. Was this a Paco product?

3 A. Yes, sir.

4 Q. And over the next number of years, how
5 long was it before asbestos was phased out of all of
6 the Paco products?

7 A. That was phased out in '77. But, between
8 '72 and '77, there were formulas that were revised
9 and different raw materials were looked at to get
10 the product -- to substitute the asbestos. The
11 asbestos was taken out of some of the products in
12 different percentages and went from a six percent
13 down to maybe a two. We had a couple of
14 non-asbestos products, but in '77 asbestos was out
15 of everything.

16 Q. Okay. I would take it one of the
17 immediate concerns at Kelly-Moore would have been to
18 continue to be able to make the product, the Paco
19 products, and stay in compliance with the new OSHA
20 restrictions on the dust counts within the facility?

21 A. Yes, sir.

22 Q. Do you know --

23 A. And we did.

24 Q. Do you know what was done by Kelly-Moore
25 as a result of the new OSHA standards on the dust

1 releases to get them within compliance to the new
2 standards?

3 A. Yes. And -- boy, maybe this is a time,
4 too, to clarify something. I want to go back to
5 prior to the break when you were asking me about
6 testing. Okay. I had in my mind that it was prior
7 to '70, and I want to make sure we don't get messed
8 up here.

9 Our testing was done -- a lot -- some testing
10 was done beginning in '72 because of Liberty Mutual
11 was our industrial hygienist. We also did some
12 product testing in '75. So, there were tests --
13 there was testing done on the products, but I
14 believe I may have mislead you because I thought you
15 were asking me about '70, prior to '70.

16 As it relates to this, what did Kelly-Moore do
17 to bring to -- to comply with OSHA, we had the
18 industrial hygienist visit the plants, check them,
19 and make -- tell us what we needed to correct and we
20 corrected them.

21 A whole new exhaust system was installed in San
22 Carlos. The respirators were made available to the
23 employees on -- on a regular basis. There were
24 physical examinations done from that point on for
25 new hires, existing people, and on terminations.

1 Q. (By Mr. Coon) Did Kelly-Moore devise them?
2 Where did that language come from?

3 A. Oh, the language was provided by OSHA.

4 Q. Okay.

5 A. By the government.

6 Q. Okay. So, they said this is the minimum
7 you have to provide on your bags so that's what
8 you-all did?

9 MR. HAZEN: Objection, form.

10 A. No, they didn't say minimum. If you read
11 the OSHA requirements, specifically says you shall
12 put this statement on your material.

13 Q. (By Mr. Coon) Did it restrict the ability
14 of Kelly-Moore to provide any additional
15 precautionary language on their bags?

16 A. I don't recall in the regulation itself if
17 it allowed for additional, but I -- they were very
18 emphatic in what was to go on as far as what they
19 wanted on the bag.

20 Q. Okay. For instance, as a result of the
21 OSHA involvement in '72, certainly you would agree
22 that Kelly-Moore was aware by then asbestos caused
23 asbestosis, lung cancer, mesothelioma?

24 MR. HAZEN: Objection, form.

25 A. I can't say that, sir.

1 Handling of the clothing, everything.

2 So, we responded to everything that was
3 required by OSHA and our industrial hygienist to
4 comply with the law.

5 MS. YANOF: Object to
6 responsiveness.

7 Q. (By Mr. Coon) And one of the things that
8 was done, as I understand it, were to comply with
9 government regulations, was to provide a notice on
10 the bags, the Paco bags, that the products contained
11 asbestos?

12 A. That was one of OSHA's requirements,
13 correct.

14 Q. Right. And as a result of the OSHA
15 mandate to inform the purchasers of the product,
16 Kelly-Moore provided what we looked at earlier on
17 these photos of the bags of what was described as a
18 cautionary label. We can go back and look at 1030.
19 I think they all read the same. It says --

20 A. Yeah. "Caution, contains asbestos fibers,
21 avoid creating dust, breathing asbestos dust may
22 cause serious bodily harm."

23 Q. Now, with respect to those types of
24 cautionary labels, who devised those at Kelly-Moore?

25 MR. HAZEN: Objection, form.

1 Q. (By Mr. Coon) Are you --

2 A. First indication of the disease asbestos,
3 mesothelioma, seemed to come out of that
4 Johns-Manville seminar which was in 1973.

5 Q. Okay. Did the labeling that we looked at
6 on those photos ever change for the duration of the
7 time that Kelly-Moore continued to make Paco
8 products with asbestos in them?

9 A. No, sir.

10 Q. So --

11 A. Well, excuse me.

12 Q. Yes, sir.

13 A. What label are you talking about?

14 Q. The labeling that we have on the bags, I
15 think they all read the same on the photos there.
16 Did that labeling ever change over the next few
17 years that Kelly-Moore continued to make products
18 with asbestos in them?

19 A. Are you talking about the caution label?

20 Q. Yes, sir.

21 A. No. That was -- that was the label that
22 was on the products until day one -- from day one.

23 Q. Okay. And we do know that the product was
24 made through '77 or '78, correct?

25 A. '77.

1 Q. At least some with asbestos in them?

2 A. Right.

3 Q. And some was still sold in 1978 with
4 asbestos in it?

5 A. Yes. We could have sold it through --
6 well, you could even have sold some of the -- the
7 spray textures after '78, but basically through '78
8 was the end, yes.

9 Q. And to the best of your knowledge, the
10 label that we just described that was one put on in
11 '72 did not change over the remaining years that
12 they sold the products?

13 A. That is correct. In fact, I think that's
14 still part of the OSHA requirement today. I don't
15 think that ever changed.

16 Q. Mr. Giffins, next have a memo, this one is
17 KMX 1938, it's ours 1056. It's dated April '72, and
18 I want to turn your attention to the second page of
19 this document. It talks about major problems being
20 developed.

21 A. I need to familiarize.

22 MR. HAZEN: Objection, form.

23 A. Okay.

24 MR. HAZEN: Can I look at that real
25 quick?

1 Did I read that correct?

2 A. Yeah, they were indicating there was
3 possible asbestos, asbestosis exposures.

4 Q. Okay. And this is back in -- this is
5 '72, right?

6 A. April of '72.

7 Q. April '72? So we know that at least
8 Kelly-Moore's discussions with their carrier in '72
9 that that was something that they were made aware
10 of?

11 A. As I say, it was in '72 that we started to
12 become aware. Liberty Mutual was the first one that
13 reported back to us any aspect about a disease, and
14 then subsequently our seminar that we went to with
15 Johns-Manville where it talked about diseases.

16 Q. Okay. Now, let's talk about this next one
17 real quick. This was a document from Drywall
18 Industry Trust Fund that you talked about. And as
19 early as the summer of '72, they sent a letter to
20 Mr. Pickens, and he is president to the Paco
21 Textures. Do you know them?

22 A. I know of him.

23 Q. Okay. Do you know Paco Texture? Is that
24 Paco Textures?

25 A. That's Paco, yes. That should be PA.

1 THE WITNESS: Sure can.

2 Q. (By Mr. Coon) Let me show you this one
3 while he is looking at that one. Are you done?

4 MR. HAZEN: Just one second.

5 MR. COON: I am trying to cover a
6 lot of ground in a short period of time, Scott.

7 A. That happens to be -- that happens to be
8 the top sheets distribution to various corporate
9 executives, and the rest of it has to do with a
10 report that was prepared by Liberty Mutual which was
11 our industrial hygienist after their visit to the
12 plant in April of '72.

13 Q. (By Mr. Coon) And their visit was
14 promulgated or precipitated by the OSHA regs?

15 A. OSHA Regulations.

16 Q. Okay. And if we look at the second page
17 there, it talks about concerns.

18 MR. COON: If I can have it back
19 real quick, counsel.

20 MR. HAZEN: Okay.

21 Q. (By Mr. Coon) Page 2, under Line 8, major
22 problems are being developed by -- and it lists two
23 as material handling; and then B, potential
24 asbestosis exposures in drywall products departments
25 in mixing dry ingredients and filling containers.

1 Q. That should be Paco, that's you guys,
2 right?

3 A. Yeah, Paco.

4 Q. And this letter is sent from Mr. Spence as
5 Safety Committee Chairman from the Drywall Industry
6 Trust Fund advising him as president that they had
7 been in attendance to meetings with Dr. Irving
8 Selikoff, it says Selikoff's -- it's Selikoff. Do
9 you know or have you heard of Dr. Selikoff?

10 A. Sure have.

11 Q. Okay. It talks about his studies at that
12 time, showing that there was a significant increased
13 risk of lung cancer amongst those in the sheetrock
14 taping industry, correct?

15 A. It talks about the three-year study that
16 -- on the effects of dust, that is correct.

17 Q. Okay. So we know that as of the summer of
18 '72, the president of Paco Textures had been
19 apprised of studies showing that people that worked
20 in that industry were susceptible to cancer of the
21 lung from working around those products?

22 A. Well, it talks of -- it talks about that
23 fact about cancer, yes. But again, it's like I said
24 earlier, this was -- we got this information, when
25 -- you asked me about when did we start to learn

1 about the issues. It came with an industrial
2 hygienist inspection, this letter, and
3 Johns-Manville's seminar.

4 Q. Okay. But we do know that for the next
5 seven or eight years there was still no additional
6 supplemental warnings or cautionaries on the bags
7 that contained asbestos from Kelly-Moore, that the
8 products could cause asbestosis, or the products
9 could cause lung cancer, exposure to the asbestos in
10 those products?

11 A. Well, I don't know what else you can say
12 except what that -- the caution. I think that's
13 pretty explanatory.

14 Q. Okay. Well, and I understand that your
15 standing by the precaution that's on there, but you
16 would agree that the caution does not say that you
17 can get asbestosis, does it?

18 A. Well, it doesn't say that, but it says it
19 can be -- cause serious bodily harm.

20 Q. It does not say you can get lung cancer,
21 does it?

22 A. It does not. It says serious bodily harm.

23 Q. But never did say you could get cancer
24 from it?

25 A. Well, when -- I interpret it as being very

1 products?

2 A. Respirators were even available to the
3 employees prior to that.

4 MS. YANOF: Object to
5 responsiveness.

6 A. At this point it became mandatory.

7 MS. YANOF: Responsiveness.

8 Q. (By Mr. Coon) Okay. So there was
9 voluntary usage before and in light of the
10 heightened awareness and regulations, respirators
11 within the facilities became mandated in certain
12 work areas?

13 A. Yes.

14 MS. YANOF: Form.

15 A. They were always there for the employees
16 to use.

17 MR. COON: And, counsel, it's
18 Documents 1138 and 1143.

19 MS. YANOF: Objection,
20 responsiveness.

21 Q. (By Mr. Coon) And after that, there are
22 additional follow-up meetings in October '72, and
23 there was Bob Miller on this committee. Do you know
24 who Bob Miller was?

25 A. Yes. He was the plant manager --

1 emphatic that it could cause some kind of major
2 problem regardless if it's cancer or whatever.

3 Q. Now, you told us that as a result of the
4 Liberty Mutual meetings and the OSHA mandates, that
5 the Paco facilities initiated some additional
6 protocols. One would be chest x-rays for the
7 employees you had to start doing each year, correct?

8 A. Correct.

9 Q. And that was because they were at high
10 risk of getting lung disease from working around
11 asbestos, correct?

12 MR. HAZEN: Objection, form.

13 Q. (By Mr. Coon) So you-all had to monitor
14 that?

15 A. I would just -- I don't know if high risk
16 is an appropriate word, but they were at risk, yes.

17 Q. They were at risk. They were at a higher
18 risk than a nonexposed population?

19 A. Possibly.

20 Q. And so Kelly-Moore initiated programs with
21 respect to their own employees to give them an
22 annual chest ray -- chest x-ray, correct?

23 A. Correct.

24 Q. And provide respirators, they had to start
25 using respirators where they were working around the

1 Q. Okay.

2 A. -- in charge of the plants.

3 Q. Okay. And in Document 1108 reflecting the
4 Paco production meeting indicates that he advised
5 the other committee members that Kelly-Moore must
6 now have a warning on each product container to
7 indicate that asbestos is in the formula.

8 MR. HAZEN: What's the document
9 number on that, Brent?

10 MR. COON: This is 5319.

11 A. KM BB 5319.

12 Q. (By Mr. Coon) Okay.

13 A. This is dated October of '72.

14 Q. Right. Now, was it in response to this
15 that we see the cautionary labels that are on the
16 various pictures that we talked about earlier?

17 A. Yeah. This is when -- when OSHA came down
18 and started to perm -- and publish the regulations,
19 this was part of it, that the warning had to be put
20 on there. This addresses that. And so to comply
21 immediately, we had -- they had pressure sensitive
22 stickers made up and put on the bags until all of
23 the bags could have the actual caution that you see
24 there printed.

25 Q. Now, was that done as a result of this

1 meeting?

2 A. Yes.

3 Q. Okay. So, in October of '72, we -- we
4 start putting -- or preparing for labels for the
5 bags?

6 A. Yes.

7 Q. And then we have KMX 1379, shortly
8 thereafter is when it was necessary to put in the
9 vent -- ventilation equipment to further reduce the
10 dust counts in the manufacturing facilities, where
11 they were making the Paco products.

12 A. Yes. This was --

13 Q. Okay.

14 A. This is just information from Mr. Merrill
15 to Bob Miller of the activities that were taking
16 place relevant to OSHA and the labeling.

17 Q. Okay. And subsequent to that -- and,
18 counsel, this is KMX 0619, our document 1257. It's
19 dated January 4, '73, from Liberty Mutual. They
20 actually did an industrial hygiene study at the --
21 one of the Kelly-Moore facilities. This is at the
22 Ontario plant in California. They made Paco
23 products there, correct?

24 A. Yes. By the way --

25 Q. Yes, sir.

1 MR. COON: I know everybody wants

2 to --

3 MR. HAZEN: I don't want to rush him

4 now.

5 MR. COON: That's fine.

6 MR. HAZEN: He's been very

7 cooperative.

8 MR. COON: He has.

9 A. Yeah, it did indicate that the fibers in
10 the areas that were tested, where the samples were
11 taken did exceed five fibers which was the -- I
12 think that's a five. It has to be.

13 Q. (By Mr. Coon) Okay. Do you know what the
14 standard was before the OSHA reduction of the --

15 A. 12.

16 Q. You think it was 12 fibers per cubic
17 centimeter?

18 A. Yeah.

19 Q. Do you know what it was before that?

20 A. No.

21 Q. Okay.

22 A. The five was an emergency deal. They came
23 out and said we're going to do 5 to get the thing
24 going.

25 Q. Okay. And Liberty Mutual tested the other

1 A. -- they were the ones who inspected most
2 of our plants.

3 Q. Okay.

4 A. Okay?

5 Q. And in their inspection of the facility
6 for the atmospheric asbestos dust counts, it was
7 determined that the levels exceeded the permissible
8 limits for the employees, correct?

9 MR. HAZEN: Objection, form.

10 A. This letter is dated January 4th, 1973.

11 Q. (By Mr. Coon) Can we just read the first
12 couple sentences off the second paragraph?

13 A. That's what I am reading.

14 MR. HAZEN: And, Mr. Giffins, I am
15 going to caution you to take your time to read each
16 and every document --

17 THE WITNESS: Yeah, I am.

18 MR. HAZEN: -- that you're being
19 asked to. We're not going to start rushing at this
20 point. No need to.

21 MR. COON: Scott, it's fine. I don't
22 have to be home until Sunday.

23 MR. HAZEN: We will give you your
24 six hours. You will get it and if we have to here
25 until 8:00, we'll do it.

1 facilities where the Paco products were made?

2 A. Correct.

3 Q. Do you know what the general results were
4 from the other inspections of the other facilities
5 around that same time frame?

6 A. The San Carlos one needed some work, which
7 you indicated, but from what -- everything that I
8 have been able to see and detect, as soon as
9 anything was determined that was out of line with
10 what the requirements were, corrective action was
11 taken immediately to get it fixed.

12 Q. Okay. Do you know whether or not
13 Kelly-Moore had initiated any industrial hygiene
14 inspections of those facilities before OSHA?

15 A. I can't answer that. I don't know for
16 sure. I believe there were people that inspected
17 the plants for a period of time. Whether it was
18 Liberty Mutual prior to OSHA or not I don't know,
19 sir.

20 Q. Okay. Now, there were some additional
21 regulations that dealt with spray-on products in the
22 '72 standards, correct?

23 A. May I see that, please?

24 Q. Okay. Well, I don't think it's on -- on
25 there but I was just asking if you were generally

1 aware when the OSHA regs came in '72 if there was a
2 -- at that time a ban that went into effect
3 immediately with respect to certain types of
4 asbestos applications?

5 A. OSHA addressed the condition of the
6 workplace both in the factory and where the people
7 -- when they used the product. Okay? They -- there
8 was a ban by the Consumer Products Safety
9 Commission, I believe, in '78 which forbid the use
10 of asbestos in joint compounds.

11 Prior to that, everything was from -- if I am
12 answering your question correctly, based on the
13 standard established by OSHA which was the 5 fibers
14 per milliliter. Now, they also banned the use of
15 asbestos in fire retardant and pipefitting-type
16 stuff which was the main issue. That was banned, I
17 believe, early in -- in '73, '7 -- '72, '73.

18 Q. That would have been thermal insulation
19 and spray-on applications --

20 A. Right.

21 Q. -- for fireproofing?

22 A. That's right. Did not affect the products
23 that Kelly-Moore was making at the time.

24 Q. And I think there was some concern --
25 reading through the correspondence there was a

1 Carbide, and you told us earlier that Liberty Mutual
2 was your company -- I take it Liberty Mutual was
3 you-all's -- they were probably your workers'
4 compensation carrier, I would guess; is that
5 correct?

6 A. Uh-huh.

7 Q. Okay. And so they wanted to initiate
8 these dust counts within your facilities for
9 purposes of the workers' comp?

10 MR. HAZEN: Objection, form.

11 A. Could you repeat that please?

12 Q. (By Mr. Coon) Yes, sir.

13 A. I was looking at this and not paying
14 attention to you.

15 Q. I'm sorry, I was asking a question while
16 you were reading something.

17 I would assume Liberty Mutual was out doing
18 dust counts at the plants for purposes of the
19 workers' comp premiums?>

20 A. For workmen's comp premiums? You mean to
21 take the counts for their benefit?

22 Q. Well, if -- if Liberty Mutual is your
23 workers' compensation carrier, they probably want to
24 get some idea of what the risk issues are, and want
25 to go out and inspect the plant for overall plant

1 general concern to some degree at Kelly-Moore that
2 the ban on spraying asbestos for fireproofing could
3 apply to the spray-on application of the textures
4 and joint compounds?

5 A. That is correct. And we inquired with the
6 E -- EPA to find out if, in fact, our products were
7 covered, and they said no.

8 Q. They said it just applied for those
9 fireproofing purposes?

10 A. That is correct, sir.

11 Q. Did not apply for tex screening and so
12 therefore Kelly-Moore made the decision they could
13 continue to make that product and not be afoul of
14 OSHA regs?

15 MR. HAZEN: Objection, form.

16 A. Well, OSHA said you could continue to make
17 the product if you met these qualifications. We met
18 the qualifications.

19 MR. COON: Next we have 0168.
20 Counsel, this is our document 1236.

21 MR. HAZEN: Okay.

22 Q. (By Mr. Coon) This one is dated November
23 13, '73. It appears to be another industrial
24 hygiene sample. It's called "Airborne Asbestos
25 Fiber Counts." And these were collected by Union

1 conditions because they're going to have to cover
2 the medical bills for employees, right?

3 A. Sounds logical.

4 Q. Okay. I am -- was there any other reason
5 that Liberty Mutual was the one selected to do your
6 industrial hygiene studies?

7 A. I can't answer that.

8 Q. Okay.

9 A. I know they did them and, as I say, they
10 may have even been doing studies prior to OSHA.

11 Q. But they were not an industrial hygiene
12 organization? Liberty Mutual was not. They're an
13 insurance company?

14 A. Yeah, but they -- I believe they have a
15 division which does that. They have people that go
16 out and do the inspections and measure --

17 Q. Sure.

18 A. -- which they did.

19 Q. Right. And they went out to you-all's
20 plants because they were your -- you were their
21 insured? Kelly-Moore was their insured?

22 A. I'll agree with you, I guess.

23 Q. Okay. Well, I was presuming that but did
24 not know. I mean, were you-all hiring Liberty
25 Mutual to come out and inspect them because they had

1 an industrial hygiene division, or were you-all
2 doing it because they were your insurance carrier?

3 A. I can't answer that. I wasn't there. I
4 don't know how that came about.

5 Q. Okay.

6 A. But I know they did inspect the plant and
7 they told us where we complied and where we didn't
8 comply, and as a result of that we did what they
9 asked us to do.

10 Q. Okay. And so where you were out of
11 compliance, where the dust counts were too high, you
12 had to go in and provide additional ventilation, or
13 other procedures to lower the counts to get them
14 within the OSHA limits as set at that time?

15 A. That's correct.

16 MR. HAZEN: Object to form.

17 THE WITNESS: Oh, sorry about that.

18 MR. COON: Scott, how we doing on
19 time?

20 MR. HAZEN: Why don't we take five
21 minutes real quickly and we will add it up and see
22 where we are?

23 MR. COON: Okay.

24 THE VIDEOGRAPHER: Going off the
25 record at 5:10.

1 (A recess was taken.)

2 THE VIDEOGRAPHER: Back on the
3 record. The time is 5:38.

4 Q. (By Mr. Coon) Ready?

5 A. Yes, sorry.

6 Q. Mr. Giffins, we next have 1061. Counsel,
7 this was your document 1380.

8 MR. HAZEN: Okay.

9 Q. (By Mr. Coon) This is July 25, '72. It
10 appears to be addressed to each employee at Paco
11 textures. Would that be at all their facilities
12 that were in place in 1972?

13 A. It appears it would be, yes.

14 Q. Okay. And subject is Paco status?

15 A. Paco status concerning OSHA requirements
16 for asbestos exposure.

17 Q. Okay. And what was the first statement
18 for Mr. Merrill?

19 A. He says, "You should be aware that we are
20 presently exceeding the exposure limit set by the
21 Occupational Safety and Health Act for asbestos.
22 And this was a result of the Liberty Mutual --

23 Q. Okay.

24 A. -- visit which was prior to this.

25 Q. So, when Liberty Mutual came out and did

1 the industrial hygiene studies, found the excess
2 fiber counts, this was a follow-up letter to the
3 employees to let them know that that was an issue,
4 and that there were going to be certain protocols
5 with respect to OSHA and trying to get into
6 compliance?

7 A. I assume that's what that implies, yes,
8 sir.

9 Q. Okay. Now, one of the things it talked
10 about in here -- I want to turn your attention to
11 number 3. It says, "Rotation of" -- there you go.
12 Got it? "Rotation of schedules to minimize
13 exposure."

14 A. Correct.

15 Q. Do you know what that means?

16 A. Part of original OSHA requirement said
17 that if you were in -- if, in fact, an area was not
18 in compliance, you had the ability to rotate people
19 until you brought it into compliance.

20 Q. Okay. And that was because OSHA
21 Regulations had a certain level of permissible
22 exposure in a given hour, based on an eight-hour
23 day, correct?

24 A. On an eight-hour day, it was -- based on
25 an average, it was five.

1 Q. Right. And are you familiar with the TWA?
2 You know what that meant?

3 A. TWA?

4 Q. The time weight average.

5 A. Oh, I've heard of it, but --

6 Q. Did you know how the OSHA standards took
7 place with respect to measuring the fiber counts in
8 the particular areas of the plant?

9 A. I failed that test.

10 Q. Okay. Are you aware -- I take it you are
11 aware that if the amounts of dust exceeded the
12 permissible amount on an hourly basis, that what you
13 would do is you could have an employee just work
14 there a few hours a day, and get a full day's dose
15 and then be taken out of that area where he's not
16 exposed anymore?

17 A. It could go up to a maximum, I believe, of
18 10 over that eight-hour period if it did not exceed
19 five hours per day.

20 Q. So, what Kelly-Moore decided to do,
21 apparently, from this memo, was to take employees
22 that normally worked eight hours a day in certain
23 areas that were getting overexposed, under those
24 OSHA limits, and to say you're not going to work
25 there eight hours anymore, you're going to work

1 there just a few hours, and we are taking you off
2 and putting somebody else in there?

3 MR. HAZEN: Objection, form.

4 A. Well, that says that you could do that.
5 Whether they did or not, sir, I don't know.

6 Q. (By Mr. Coon) Okay. Well, it did say
7 that we are taking the following actions to comply
8 with the requirements?

9 A. That is correct.

10 Q. So, by all indications from Mr. Merrill,
11 one of the ways Kelly-Moore was going to continue to
12 keep their plants fully operational was to rotate
13 people out of the high-exposure areas?

14 MR. HAZEN: Objection, form.

15 A. Again, that was a -- that was a process
16 that was provided, or OSHA said could be done within
17 -- within their guidelines.

18 Q. (By Mr. Coon) Sure. I mean, OSHA allowed
19 y'all to rotate them out?

20 A. That's correct.

21 Q. So y'all did it, right?

22 A. That's correct.

23 Q. So, y'all are playing with within the
24 rules --

25 A. Right.

1 Q. -- but you're not -- but to play within
2 the rules, your guy couldn't even work there for an
3 eight-hour shift?

4 MR. HAZEN: Objection, form.

5 Q. (By Mr. Coon) That's why you had to
6 rotate them out, right.

7 A. Yes.

8 Q. Okay. And one of the other things it
9 mentions that Kelly-Moore decided to do was improve
10 the handling of work clothes. Do you know what that
11 addressed?

12 A. Specifically, I don't know what they did
13 then, but at the -- when they put all that
14 ultimately into effect, a lot of the clothing was
15 put in bags when they were changed. And the way
16 they dusted themselves off was looked at
17 differently. I can't get into the specifics of what
18 was actually implemented, but it all had to do to
19 comply with the handling of the clothing in line
20 with OSHA Regulations.

21 Q. Do you know whether or not Kelly-Moore was
22 aware at that time with the employees having the
23 clothing on their -- the dust on their clothing that
24 that could be taken outside the workplace, taken
25 back to their vehicles, back to their homes?

1 A. I can't answer that, sir. I don't know
2 what they knew at that time other than what I have
3 read.

4 Q. Did the employees that worked out at the
5 Paco facilities all have uniforms that they left
6 there every day?

7 A. They wore certain -- I don't know -- like
8 coveralls, I would have to say. Something like
9 that.

10 Q. Were these provided by the plant, or were
11 these their own that they brought as part of their
12 regular attire?

13 A. I can't answer that. I don't know if they
14 were provided or not.

15 Q. Okay. We next have this letter from the
16 Drywall Industry Trust Fund. I think you mentioned
17 them earlier. Actually, I think we discussed this
18 one.

19 A. Yes.

20 Q. Okay. I want to ask you one other thing
21 here. Did you know Mr. Spence?

22 A. Mr. Spence from the Drywall Industry Trust
23 Fund?

24 Q. Right.

25 A. No.

1 Q. Did you have any involvement with the
2 Drywall Industry Trust Fund?

3 A. No, sir.

4 Q. From the times you worked there from '85
5 since, do you know whether or not that organization
6 is even still in existence?

7 A. I can't tell you that.

8 Q. Do you know if there were any other
9 organizations like the Drywall Industry Trust Fund?

10 A. I cannot tell you that, sir.

11 Q. Okay. Well, this one said for the
12 advancement of drywall in California. Do you know
13 if they had a state-by-state type of organization,
14 they had the same type of deal in Texas, for
15 instance?

16 A. I don't know that for a fact.

17 Q. Do you know if there was any national
18 industry like the drywall industry? If there was a
19 national organization?

20 A. I don't think I have seen anything so --
21 but it doesn't mean there wasn't.

22 Q. Okay. Next, I don't think we have talked
23 about this one yet. This is KM 1060.

24 Yours 1381, counsel.

25 This was a Paco production meeting letter, I

1 would guess Mr. Marquardt and Bob Scudder?

2 A. This was a -- this is production meeting
3 notes, meetings where they -- they had a meeting and
4 took notes.

5 Q. Okay. Who took the notes? Do you know?

6 A. I don't know who took the notes.

7 Q. Okay. Now, we were talking about this one
8 I think before we took that break. This is where it
9 said, "Bob Miller reports that the latest bulletin
10 on the use of asbestos in joint cement and paint
11 products indicate we will not have to eliminate it
12 from our formulations immediately."

13 A. "However, it will be necessary for us to
14 provide proper respiration-type devices for men and
15 have lung x-rays made of the workers at least once
16 each two years. Further information on this will be
17 put out to each of the manufacturing operations by
18 Bob Miller."

19 MS. HAAG: Object to the
20 nonresponsive portions.

21 Q. (By Mr. Coon) All right. Do you know as
22 a result of this what was done by this group? Let
23 me ask first, who are these guys? Was there a
24 separate committee of representatives of Kelly-Moore
25 that just dealt with these kind of issues with Paco

1 A. So this was prior to even the industrial
2 hygienist coming in to -- this was right after all
3 this started to surface. So, what they're passing
4 on is information to the group that were
5 responsible, this is what we know -- we've heard
6 this, but there is some -- a lot of it kept changing
7 and kept getting added to.

8 Q. Sure. And as I read this, it said that --
9 I thought what was relevant here, where it said, we
10 will not have to eliminate it -- when we're talking
11 about asbestos says, we will not have to eliminate
12 from our formulas immediately. Could you tell from
13 that and other correspondence in your historical
14 review if they had reason to believe that there was
15 still going to be additional restrictions coming
16 down the pipeline to where asbestos was going to
17 have to be excluded?

18 MR. HAZEN: Objection, form.

19 A. I can't read that into this. What I can
20 read into this is there was a misinterpretation on
21 what their requirements were originally, and they
22 may have thought at a prior meeting that they had
23 eliminated it entirely and since found out that was
24 not the case. That's the only way I can interpret
25 that, sir.

1 after OSHA came out?

2 A. No. I can tell you Doug Miller -- or Doug
3 Merrill -- yeah, Doug Merrill was the chemist for
4 the Paco products. Bob Miller is in charge of the
5 plants. Bill Moore owned the company. Dan Murphy,
6 I am not sure what -- he had something to do with
7 the plant. Walter Pickens was president of Paco at
8 that time.

9 Q. Okay.

10 A. Okay?

11 Q. Was -- could you tell from this that there
12 was an understanding or impression from the people
13 involved, particularly from the reporting of
14 Mr. Merrill, that the first phase of the OSHA
15 Regulations of 1972 were going to result in the
16 future with additional restrictions?

17 MR. HAZEN: Objection, form.

18 A. I think the only way I can answer your
19 question, your comment, is around this time, there
20 was a whole bunch of different information coming
21 down. And, in fact, I think if you look at this, it
22 says, "Lung x-rays made of workers at least once
23 every two years." The final regulation said they
24 had to be done every year.

25 Q. (By Mr. Coon) Right.

1 Q. (By Mr. Coon) Okay. Earlier you also
2 talked to us about the Johns-Manville program. And
3 you talked about the notice that Kelly-Moore had,
4 with respect to asbestos hazards. You talked about
5 OSHA and then the Johns-Manville program.

6 A. Johns-Manville seminar?

7 Q. Yes, sir. We have what's KM 1002 and
8 1014. This appears to be a cover letter, form
9 letter sent by Manville to the various customers
10 advising them of this program, and that there was a
11 transcript available, and this was also in your
12 repository which is the transcript of the symposium
13 itself, dated December 3 and 4 --

14 A. Correct.

15 Q. -- 1973, titled, "Asbestos and Health
16 Presentation." And obviously that was a program
17 that was called pretty much just to discuss asbestos
18 and its health ramifications. Do you know if there
19 was --

20 A. Plus that same program, they talked about
21 the industry as a whole, and where they fit in --
22 fit it into the industry, and duh, duh, duh as well.
23 It was a multi-purpose meeting.

24 Q. Do you know whether or not there were any
25 attendees of this program that were representatives

1 of Kelly-Moore or Paco?
 2 A. Doug Merrill.
 3 Q. You understood Mr. Merrill actually
 4 attended that program?
 5 A. Yes, sir.
 6 Q. And do you know where this program was
 7 held?
 8 A. Somewhere in San Francisco.
 9 Q. So, we could pretty much presume that the
 10 contents of this seminar, if the notes were all
 11 taken accurately, were things that would have been
 12 conveyed to Mr. Merrill as a result of being at the
 13 meeting?
 14 A. As I understand it, Mr. Merrill attended
 15 the meeting, took notes, was able to -- they handed
 16 out some material for him to bring back. This
 17 letter confirms his attendance, and the fact that
 18 they are going to send out the transcripts, the hard
 19 copies, from the meeting for his further review.
 20 And that's what those are.
 21 Q. Okay. Now, obviously if you -- have you
 22 had an opportunity to read this, the transcript of
 23 the symposium?
 24 A. Yes, sir.
 25 Q. Okay. And you are aware that in it, it

1 contents of that thing, it also says that under
 2 controlled environments it's -- you continue -- that
 3 it's safe to use the material.
 4 Q. Under certain circumstances?
 5 A. Under certain circumstances, correct.
 6 Q. And we next go to September '74. This
 7 appears to be additional internal memos. It's the
 8 Paco production. I can't read it all. It said memo
 9 or meeting.
 10 MR. HAZEN: Brent, what's the number
 11 on that one?
 12 A. This is -- oh, his number is -- ours is
 13 KM-47. And this is dated September 30 of '74, and
 14 it looks -- it's got ME. I guess it meant Paco
 15 production meetings.
 16 Q. (By Mr. Coon) It talked about -- I think
 17 one of the things that was discussed here is the
 18 potential for reformulating their product.
 19 A. Yeah. You want me to read it?
 20 Q. Yeah, if you don't mind.
 21 A. Okay. Paragraph 3 says, "The change in
 22 our acoustic formula using a different form of
 23 asbestos instead of titanium has worked out very
 24 well in our field tests. We have had no complaints
 25 and some customers actually like it better. It has

1 talked about various health problems associated with
 2 asbestos, which --
 3 A. Right.
 4 Q. -- included asbestosis, lung cancer and
 5 mesothelioma?
 6 A. I don't know if it mentions each -- the
 7 three of them, but it does talk about their -- I
 8 don't recall each three, but it does talk about
 9 health issues, yes.
 10 Q. Okay. I'll even point you to some pages,
 11 Page 6 of the transcript specifically talking about
 12 different disease categories. Do you understand
 13 bronchogenic cancer to be lung cancer?
 14 A. Right.
 15 Q. Right?
 16 A. Okay.
 17 Q. And, of course, talks about mesothelioma
 18 here, right?
 19 A. Correct.
 20 Q. So we know that at least by late '73,
 21 Mr. Merrill, as a senior spokesperson for
 22 Kelly-Moore, is aware of these issues being caused
 23 and associated to asbestos?
 24 A. Those were brought up in that seminar
 25 also, but I think if you read some of the other

1 resulted in a lower cost for us; therefore, it has
 2 been agreed that we will make this change in the
 3 formula and not indicate it on the bag. However, we
 4 will be making some batches of the old material
 5 until the present raw material supply is used up.
 6 Because of this decrease in cost, we will not have
 7 to" -- I believe that word is -- "increase the price
 8 of our acoustic."
 9 I can't read those next two words. With an --
 10 something about the next price increase.
 11 "This applies to 6373 B and L formulas only."
 12 Q. Do you know who the provider was of the
 13 other types of asbestos that were being substituted?
 14 A. They were testing the Union Carbide
 15 product.
 16 Q. And do you know what the purpose of
 17 substituting these products were other than the
 18 price? Appears that there was something that
 19 triggered the substitute?
 20 MR. NANTZ: Objection, form.
 21 A. My understanding is that -- that material
 22 is being tested was the raw material that was being
 23 promoted by Union Carbide at the time, provided a
 24 few benefits. One being that it came with titanium
 25 fused to the fiber. Normally most of the fiber you

1 buy, you got to put the asbestos in and then you put
2 titanium in.

3 What they were calling -- I think it was HPO or
4 something -- came with the fiber and titanium glued
5 onto it. You know, I'm not a technical person so
6 don't hold me to it. And as a result you also
7 didn't have to buy titanium and put in it, and they
8 also were saying that you would use less asbestos
9 because it was a higher, more-efficient-type fiber.

10 Q. (By Mr. Coon) Okay. Next we have --

11 MR. NANTZ: What was the number on
12 that?

13 MR. COON: 1051. This is -- ours is
14 1063.

15 Q. (By Mr. Coon) Okay. Next you got 1051.
16 This is the full content of a document we discussed
17 earlier. I'll be real brief with this. We
18 discussed this one here. This is the occupational
19 injuries and illnesses. We talked about the one
20 person indicated here in '74 as having a dust
21 disease. Do you remember that?

22 A. Indicated they thought they had a dust
23 disease, yes.

24 Q. And if we look back at the rest of this
25 attachment includes some additional forms, and

1 non-asbestos ceiling texture. That was ceiling
2 texture formula that was developed back in '73.

3 Q. So we now have a substitute for the
4 ceiling that's a non-asbestos?

5 A. Yes. We had that since '73.

6 Q. Okay. And the standard formula still
7 contained a small percentage of asbestos apparently?

8 A. In California. California, back in '75,
9 regulated the amount of asbestos that could be in --
10 excuse me -- spray-on material, ceiling textures.

11 And they -- they just came out and first said you
12 could have no more than one-half of one percent.

13 Fortunately, the company had developed that
14 ceiling texture formula for California in '73, so
15 the only thing that was really pushed by this was
16 the wall texture issue.

17 Q. All right. So you had a couple of issues.

18 One was compliance with the OSHA regs that come out
19 in 1972, and then you still may have a
20 state-by-state compliance issue based on the
21 vagaries of state law?

22 A. California --

23 Q. California being one?

24 A. -- came out with their own regulations.

25 Q. Sure?

1 production manager --

2 A. Can I clarify this?

3 Q. Sure, if you don't mind.

4 A. When you showed this to me, I didn't
5 remember, but I hadn't seen this until recently.
6 There was an indication with a worker in the plant,
7 by the name of Bowers. I can't think of his first
8 name. Martin Bowers maybe. I don't know.
9 Something like that. And the x-ray indicated that
10 there was a spot, and it was determined that the
11 spot was not caused by asbestos.

12 Q. Okay.

13 A. And that's maybe what this is. Okay?

14 Q. And would the person signing off there
15 have been production manager at that particular --

16 A. Doug Merrill.

17 Q. Okay. That's Doug?

18 A. Yes.

19 Q. Next we have a series I think of three or
20 four documents. This one is KM 1110, prior KM
21 Number 5327. This was from Doug Merrill again to
22 Bill Freeman. It's dated June 27, 1975. And there
23 are three or four letters there, memos.

24 A. Okay. This one is addressing the fact
25 that he is sending him some material of a

1 A. That's correct. And what he's saying here
2 is we had this non-asbestos product that we can make
3 for you, try this formula. See if it works with
4 your people. But there was also the asbestos
5 product that was available in other plants outside
6 of California, because it was still -- you know, it
7 was satisfactory to go ahead and make it.

8 Q. You could use it in states other than
9 California?

10 A. You sure could.

11 Q. Okay. But it was something that
12 California statutes had precluded use of?

13 A. In June or July of '75, California said
14 that you could not put -- have sprayed products,
15 spray texture products that had more than one-half
16 of one percent of asbestos in it.

17 Q. Right.

18 A. In July of '76, that went to zero.

19 Q. And that was pursuant to --

20 A. Total.

21 Q. Well, we have got a copy of the statute
22 here but I don't think we need to reference it.

23 You had July of '75, when California passes its
24 law --

25 A. Right.

1 Q. -- the amount of asbestos typically in
2 your products at that time was still running about
3 five or six percent, was it not?

4 A. This is only addressing spray textures.

5 Q. Right.

6 A. You have to keep in mind that we had a
7 non-asbestos ceiling texture that was being sold in
8 California at the time very successfully.

9 Q. Right.

10 A. So --

11 Q. But you also had the asbestos-containing
12 product line that was still marketed as well?

13 A. We had the wall texture product. This
14 only addresses the textures.

15 Q. Right. And my understanding was, though,
16 is that you had two different product lines. You had
17 an asbestos-containing product and you had a
18 non-asbestos-containing product that were used for
19 the same purpose, as of 1975?

20 MR. HAZEN: Objection, form.

21 A. Yeah. That -- that could be, yes, because
22 the ceiling texture was non and asbestos containing.

23 Q. (By Mr. Coon) Right. So you now had two
24 product lines, one that complied with the general
25 OSHA regulations -- actually both did in '75. The

1 A. Immediately.

2 MR. HAZEN: Objection, form.

3 Q. (By Mr. Coon) Okay. And after they
4 addressed those problems, they were able to still
5 make the product and stay within compliance of the
6 OSHA limits on exposure in the workplace?

7 A. Uh-huh.

8 Q. Okay. Correct?

9 A. Uh-huh.

10 Q. And so that enabled them to continue to
11 make the product with asbestos in it for use in
12 whatever states they wanted to sell it in, correct,
13 except for California?

14 A. Well, in -- California in '75 decided that
15 they were going to eliminate that in any spray-on
16 products to begin with --

17 Q. Right.

18 A. --so -- but up until that point, yes, we
19 complied in the way we made the product according to
20 the federal requirements.

21 Q. Okay. So after 1976 when California had a
22 complete ban on those products that contained
23 asbestos, you were still able to manufacture it with
24 asbestos for sale in some states and have an
25 asbestos-free product for California, as well as

1 asbestos-containing and the non-asbestos-containing,
2 still met the OSHA limits on usage?

3 A. I'm getting a little confused, because
4 OSHA addressed the workplace and the amount of fiber
5 that was basically released.

6 Q. Okay.

7 A. Okay?

8 Q. And you could make the product in
9 compliance with OSHA --

10 A. That's correct.

11 Q. -- with asbestos?

12 A. Yes, sir.

13 Q. With the five or six percent, with the
14 additional things you did rotating employees,
15 putting in ventilators, stuff like that, you were
16 able to get the counts down to continue making the
17 products, right?

18 MR. HAZEN: Objection, form.

19 A. I don't know if I can answer -- I don't
20 know if I would put it in those words or not.

21 Q. (By Mr. Coon) Okay. Well, we know that
22 in 1972 when Liberty Mutual came out and inspected
23 the plants, they said here is the problem. And to
24 address the problem, we saw the memos where they
25 took certain steps to address that.

1 anybody else that wanted it?

2 A. Yeah. Well, it's -- the interesting part
3 of that California law, California addressed the
4 application of the product. They said you could not
5 apply a product in 1976 that contained any amount of
6 asbestos in the spray textures. They did not say
7 you could not manufacture it, nor did they say you
8 could not sell it.

9 Q. Sure.

10 A. The contractor could not apply it.

11 Q. Right. And you were still making this
12 product in California, you just could not use it in
13 California?

14 A. That is correct.

15 Q. And you could sell it to other places? I
16 guess you could still sell it in California, you
17 just couldn't use it in California, right?

18 A. It could not be applied.

19 Q. Yeah, but you could sell it to somebody in
20 California --

21 A. Sure.

22 Q. -- they just couldn't use it?

23 A. In theory you could have. We didn't.

24 Q. No good for them to buy it if they can't
25 use it, right?

1 A. There was a heavy demand by people for the
2 old product.

3 Q. Okay.

4 A. But --

5 Q. But --

6 A. The asbestos-free product, the ceiling
7 product that we were -- had selling was very
8 successful, was well accepted in California so --

9 Q. I just want to make sure we understand
10 something though. California was making -- your
11 California facility was making the spray-on product
12 with asbestos in it, after California had a ban on
13 using those same products in California?

14 MR. HAZEN: Objection, form.

15 A. I can't say that they actually did. They
16 could have, but I don't know if, in fact, they did.

17 Q. (By Mr. Coon) Okay. Which facility was
18 making the spray-on product?

19 A. Whatever -- well, Hurst.

20 Q. Okay.

21 A. Right here in Texas.

22 Q. We're talking -- wasn't one of the
23 California facilities still making it?

24 A. In '85?

25 Q. No, sir, '76.

1 Different regions of the country preferred different
2 types of products. We were in the effort of trying
3 to get all of those other products converted to meet
4 the requirements of those various contractors.

5 So, there was a difference in how the product
6 was used or accepted in different markets. So, to
7 keep in mind is, however, that formulas that were
8 developed in the California deal, any material that
9 would have come out of that California facility,
10 would have come out at less than one-half of one
11 percent at the most.

12 Q. Okay. Well, the way I read this, the
13 attached memo was that in the other markets, like in
14 Tulsa, people were trying to get the non-asbestos
15 ceiling texture and couldn't get it from you guys.

16 A. No, that's not true.

17 Q. Here.

18 MR. HAZEN: What document are you
19 referring to, Mr. Giffins?

20 THE WITNESS: He's referring to KM BB
21 5328. This is dated November 12th, 1975. And I --
22 the first paragraph states, "In June of this year,
23 Bill Freeman, Tulsa, requested a non-asbestos
24 product to be available to him since he was losing
25 business on jobs that stated no asbestos. In early

1 A. I mean '76? Ontario closed down, what?
2 In '77?

3 Q. Uh-huh.

4 A. We have to go back and look at his record,
5 but I -- he -- they may have been -- they may have
6 converted to -- to the non-asbestos product. But it
7 would have been -- up until '76, San Carlos and
8 Ontario could have made it. But after '76, they
9 probably did not, because there was the acceptance
10 of the -- of the ceiling texture product was
11 accepted well in the California markets.

12 Q. Okay.

13 A. It was not accepted well in the other
14 markets.

15 Q. They were able to go ahead and phase out
16 and go into the transition of non-asbestos for
17 California?

18 A. That's correct.

19 Q. Why did Kelly-Moore not go ahead and phase
20 out that same product with asbestos in it in all the
21 other states where the law had not precluded them
22 from selling it yet?

23 A. Well, as that indicates, that particular
24 letter to Bill Freeman, that there were some samples
25 being sent to him. Now, he was in Oklahoma.

1 July, 56 backs of non-asbestos ceiling texture were
2 sent to him for testing. Upon his approval of this
3 material, Wayne Harp made a batch at Hurst and sent
4 it to Tulsa. It is not -- it is my understanding
5 nothing has been done beyond the testing of this
6 product."

7 The free products were sent to Tulsa for
8 his testing and acceptance by his customers. So he
9 had asked for a non-asbestos product because of
10 specifications. And was in the process of that -- I
11 interpret that as in the process of evaluating.

12 Q. (By Mr. Coon) Okay. Let's get to the
13 next one, June '75. This one is KM 1235. This
14 appeared to be the airborne fiber counts at the Paco
15 facility at Los Gatos. Where would that be?

16 A. Los Gatos, California? It's a town south
17 of San Carlos.

18 Q. Okay. I had not recalled us talking about
19 that as being one of the Paco manufacturing
20 facilities?

21 A. It's not. That was a test. That was one
22 of the tests that was -- it was done in 1975, for
23 two reasons.

24 Q. Okay. But it said the test is at -- for
25 Paco's at Los Gatos?

1 A. Paco product at Los Gatos is a city, town,
2 and it was done on new construction, new houses.

3 Q. Okay. So, they went out to where one of
4 the Paco jobs was taking place?

5 A. They went out to a job site where houses
6 were being built and used Paco products on those,
7 that is correct.

8 Q. Got it. And then the -- the summary and
9 fiber count speaks for itself when you look at the
10 airborne fiber counts, I guess, at the third and
11 fourth pages, in terms of --

12 A. May I look at it, please?

13 Q. Sure. Do you know what the purpose of
14 going out to actually do a field study of the --

15 A. Sure do.

16 Q. -- asbestos product release would have
17 been?

18 A. Sure do.

19 Q. What was that?

20 A. First of all, to further evaluate the
21 Union Carbide product that we talked about earlier,
22 that was discussed in 1974. The fiber that had the
23 titanium glued to it.

24 Q. Right.

25 A. And also to evaluate the fiber -- level of

1 A. I -- I can't tell, sir.

2 Q. Okay.

3 A. But they're the same letter.

4 Q. Okay. It looks like there were comments
5 about -- this was to Doug Merrill from Michael Love.
6 Mr. Love was a senior loss prevention representative
7 for Liberty Mutual?

8 A. Correct.

9 Q. And he provides an analysis of certain
10 issues with respect to their asbestos survey report?

11 MR. HAZEN: Document number, Mr.
12 Giffins?

13 THE WITNESS: It's KMX 00577.

14 Q. (By Mr. Coon) And it talks about the
15 interest in removing asbestos from all the products?

16 A. Correct. He's talking about our interest
17 in -- to remove asbestos from all our products,
18 correct.

19 Q. And this is back in '75, December of '75?

20 A. '75. Correct.

21 Q. And then if you look at the two letters, I
22 guess the question was, there -- this letter we have
23 a copy of, it doesn't have any notes on it, and then
24 this copy has two through five, embraced in a
25 bracket, with a compliance and question mark. Do

1 the airborne fiber count of our products. And of
2 the -- of the ceiling products I should say. And so
3 this was -- this test was against the Union Carbide
4 material, and I believe at that time it was Canadian
5 -- Carey-Canadian.

6 Q. Okay. And --

7 A. And by the way, on those levels, I think
8 they were all below the requirement at the time. It
9 was five. What is -- they're all below five, I
10 believe.

11 THE REPORTER: Give me just a
12 second.

13 MR. COON: Ready?

14 THE REPORTER: Ready.

15 Q. (By Mr. Coon) Okay. Next, we have a
16 December '75, this appears to be another industrial
17 hygiene study. I take it that Liberty Mutual would
18 still come out from time to time to determine what
19 the dust count levels were in the plants?

20 A. On a regular basis, yes.

21 Q. Okay. We also have an August 15 report
22 that may be part of that. Is that part of that?

23 A. These are both the same letter.

24 Q. Okay. One copy somebody has written on,
25 the other copy looks like it was the file copy?

1 you know what that meant?

2 A. Somebody's highlighted it.

3 Q. Do they know whether or not at this time
4 that these things that were supposed to be taking
5 place were, in fact, occurring, like making sure
6 operators wore respirators and things like that?

7 MR. HAZEN: Objection, form.

8 A. If they read the letter December 10th,
9 1975, Number 2 says -- well, Number 1 says, "Present
10 local exhaust to be totally inadequate on one of the
11 baggers." Okay. So, that was highlighted.
12 Somebody highlighted that for some reason.

13 Q. (By Mr. Coon) Right.

14 A. "Continue to provide the operator on the
15 dry texture bagger with coveralls. This is required
16 to prevent the worker from bringing asbestos home on
17 his clothing. Continue" -- and this is talking
18 about continuing this, not implementing this,
19 continuing.

20 Q. Right.

21 A. "Continue to emphasize that all operators
22 must wear appropriate dust masks."

23 MS. HAAG: Objection to the
24 nonresponsive.

25 Q. (By Mr. Coon) This actually brings up

1 something here, too. When I'm talking about two, I
2 don't guess we have to read all of them from a time
3 standpoint, but we talked earlier about the clothing
4 issue.

5 A. Right.

6 Q. And if you look at this, it says, they
7 were requiring coveralls to prevent the worker from
8 bringing asbestos home on his clothing. So
9 apparently there was an awareness. Remember we
10 talked about that earlier?

11 A. Right.

12 Q. About maybe bringing some of it home?

13 A. And it does say continue.

14 Q. Yeah.

15 A. Which means it was implemented.

16 Q. And these are the types of things that
17 were implemented to comply with OSHA mandates in
18 '72?

19 A. Uh-huh.

20 MS. HAAG: Object to form.

21 Q. (By Mr. Coon) Okay. Next we have --
22 we're up to '76. In February of '76, we got another
23 one. This is correspondence back to Mr. Love, as
24 Liberty Mutual loss prevention representative?

25 MR. HAZEN: Document number,

1 to get asbestos out.

2 Q. And then we go to February of '76, this is
3 from Hughland Brinkley. To Hughland Brinkley from
4 Mr. Merrill. Did you know Mr. Brinkley?

5 A. Let's see, who does he work for?

6 MR. HAZEN: Number please?

7 THE WITNESS: Number KM-117,
8 Plaintiff's Exhibit.

9 MR. COON: Ours is 1055.

10 MR. HAZEN: Thanks.

11 A. No, I did not know him, but he was
12 evidently the director of enforcement for the Bay
13 Area Air Pollution Control District.

14 Q. (By Mr. Coon) Okay.

15 A. So, he would have been an EPA-type person.

16 Q. And what was the purpose of that letter?

17 A. To reconfirm -- let's see, "Please be
18 advised that we use asbestos in the course of our
19 operation, which may be considered an emission
20 source under Regulation 8, Emission Standards for
21 Hazardous Pollutants."

22 He's advising the governmental agencies in San
23 Francisco that we are using asbestos, and that they
24 needed to be aware it may fit under Regulation 8. I
25 think he's being right up front telling them, come

1 Mr. Giffins.

2 A. It's -- well -- oh, KM-116.

3 Well, that's Plaintiff's Exhibit. Is that okay?

4 Q. (By Mr. Coon) Ours is 1053.

5 MR. HAZEN: Thank you.

6 A. And this is captioned "Asbestos Handling
7 Recommendations for San Carlos Factory."

8 Q. (By Mr. Coon) This is the one in
9 California, correct?

10 A. That is correct.

11 Q. And it talks first paragraph, "In reply to
12 your letter," which is the letter from Mr. Love,
13 correct?

14 A. This is from Doug Merrill to Mr. Love, who
15 is the senior representative of Liberty Mutual.

16 Q. Yeah.

17 A. And he says, "In reply to your letter of
18 December 10th, 1975, I would like to report that we
19 have now been successful in eliminating asbestos
20 completely from our texture products. We are
21 continuing our work along this line on joint
22 compound products."

23 Q. Okay.

24 A. As I said, between '72 and '77, there were
25 236 formulas that they worked on to rework that --

1 out and take a look.

2 Q. Okay.

3 THE WITNESS: Can I take a break?

4 MR. COON: Sure.

5 THE WITNESS: My bladder is about
6 ready to -- plus I --

7 THE VIDEOGRAPHER: Going off the
8 record at 6:15.

9 (A recess was taken.)

10 THE VIDEOGRAPHER: Back on the
11 record. Time is 6:22.

12 Q. (By Mr. Coon) Next we have 1127.

13 Mr. Giffins, we have a March 18, '76 letter from
14 Liberty Mutual to the Denver facility of Kelly-Moore
15 -- it's one we talked about earlier -- that made
16 Paco products, correct?

17 A. Yes, they made joint compounds.

18 Q. Okay. And we had industrial hygiene study
19 for that facility showed -- I can go back here to
20 page -- let me see the reports. Okay. Here is our
21 reports of findings. The range was from one to five
22 fibers per milliliter in the areas they tested.

23 A. Excuse me, can I see this a minute?

24 Q. Sure.

25 A. Okay.

1 Q. Okay. And I think at that time, the OSHA
2 standard was still at five?

3 A. No. This was dated in March of '76.

4 Q. Oh, it's gone down to two?

5 A. Two. I believe that's correct.

6 Q. So, do you know what was addressed at that
7 facility with respect to trying to get back into
8 compliance with the reduction of the OSHA
9 permissible level from five to two?

10 MR. HAZEN: Objection, form.

11 A. No, I don't. Wait, I have to go back and
12 read that in total.

13 Q. (By Mr. Coon) Okay.

14 A. And then the follow-up report.

15 Q. I think this -- okay. Is there an
16 attachment to this that shows what they did?

17 A. I don't know. I need to see the whole
18 thing.

19 Q. Well --

20 A. San Carlos.

21 Q. Okay. There is another attachment then.
22 Could this have been a separate inspection?

23 A. This was conducted in January of '76.

24 Q. Right.

25 A. "Per conversation, you indicate that this

1 A. As I said earlier, there were inspections
2 done in this as a result of -- in line with OSHA's
3 requirements but that did not preclude that there
4 were not inspections by these people prior to the
5 OSHA deal.

6 Q. Okay. Next we had a document dated July
7 15, '76. This is Document 1118. It's dated July
8 15, 1976, from the National Resource Defenses
9 Council. Are you familiar with that organization?

10 A. I have seen -- I have seen this, yes, sir.

11 MR. HAZEN: What's that KM number,
12 please?

13 A. KM BB 5428.

14 Q. (By Mr. Coon) It talked about increased
15 risk of cancer from working around drywall repairs,
16 and I want to ask you a couple of questions on that.
17 The products that were made by Paco, sheetrock
18 repairs, or for sheetrock, tape and floating and
19 things like that, could those be used for repairs as
20 well as for new construction?

21 A. Uh-huh. Sure could.

22 Q. Do you know whether or not any testing was
23 done by Kelly-Moore in houses or remodeling or
24 something that was taking place just to see, as an
25 example, what would happen if you were removing the

1 department was closed down, all operations, April
2 first of '76."

3 Q. As for the Denver facility, correct?

4 A. That is correct.

5 Q. But you have an attachment back here --

6 A. All right. This is the -- this is the
7 findings, the survey, and --

8 Q. And the numbers we just discussed?

9 A. Right.

10 Q. And I had all this as one document but is
11 there a separate industrial hygiene study of the San
12 Carlos, California facility?

13 A. Well, this says San Carlos. I don't know
14 how that got to be on there.

15 Q. I don't either, but it appears there was a
16 separate study of the San Carlos facility, same kind
17 of deal, industrial --

18 A. Well, would have because it was done on a
19 regular basis.

20 Q. Okay.

21 A. Yeah.

22 Q. Okay. So, you had a number of these that
23 went on from the time OSHA was implemented in '72
24 for the duration of time they continued to make
25 asbestos products at the various Paco facilities?

1 old sheetrock, or the old tapes and floats?

2 A. I don't think there was testing. I really
3 don't recall. I really don't. I am very -- I am
4 familiar with the Los Gatos test.

5 Q. There was some with respect to new
6 construction?

7 A. That is correct.

8 Q. Okay.

9 A. Now, -- okay. Fair enough.

10 Q. Okay. Next we had another memo here.
11 This one is BB 5463. It's ours, 1161. This was
12 dated October '76, again from Mr. Merrill. And this
13 was to Frank Scaggs?

14 A. Scaggs. He was the -- I believe the
15 district sales manager for the Northwest at that
16 time, for the Seattle/Portland, Oregon area.
17 Subject is non-asbestos ceiling texture.

18 Q. Okay.

19 A. And it's KM BB 5463.

20 Q. Okay. Basically talks about one
21 acknowledgment that they have asbestos-free product
22 in California, Hawaii and Utah for the customers
23 there, correct?

24 A. It says, "We have all of our California,
25 Hawaii, Utah customers using our non-asbestos

1 ceiling texture products."

2 Q. Right. Now, we talked about California.
3 Did Hawaii and Utah have the same type of ban as
4 California?

5 A. No.

6 Q. Do you know why they had the Hawaii -- why
7 they -- why Kelly-Moore had Hawaii and Utah on a
8 non-asbestos ceiling texture along with California?

9 A. Again, it was -- would have been a
10 customer preference at the time.

11 Q. Okay. Just a matter of converting the
12 customers in those states to asbestos-free?

13 A. Have you ever dealt with a painting
14 contractor when you try to give them something new?
15 It's not that easy.

16 Q. Okay. So, the -- the Hawaii and Utah
17 customers were a little more pliable?

18 A. Evidently. Now, the thing that I think is
19 important about this letter is he's writing Frank
20 Scaggs in Seattle and telling him, hey, we have
21 these products available, and even though state
22 agencies in the northwest have not taken a strong
23 stand on asbestos, I am sure that day will come.

24 So, he's taken the initiative to let him know
25 that he better try to do something about getting

1 A. I believe I have seen this, but I -- it's
2 just not coming right up on the register now.

3 Q. (By Mr. Coon) I didn't see an IH study
4 that was precipitating this. Do you know whether or
5 not there was any particular industrial hygiene
6 study done by Liberty Mutual or someone else that
7 lists --

8 A. This was done by OSHA. This is in
9 response to an OSHA inspection.

10 Q. So we know that OSHA came out and did an
11 inspection, found a number of failings and this is a
12 memo that resulted?

13 A. OSHA --

14 MR. HAZEN: Objection, form. Go
15 ahead.

16 A. OSHA had complete -- they governed the
17 workplace so they could go into any plant they want.

18 Q. (By Mr. Coon) Do you know what would have
19 precipitated the visit from OSHA?

20 A. No, generally they show up on -- whenever
21 they want.

22 Q. Okay. One of the comments here, the
23 recommendations, was to again reduce or eliminate
24 asbestos content in the ceiling texture. So, they
25 were still making ceiling texture with asbestos at

1 them converted to the non-asbestos product. To me
2 that's the important part of that letter.

3 Q. Okay. They anticipate the other states
4 reacting in a manner similar to California and
5 banning asbestos products?

6 A. No, I think they anticipated that the deal
7 on asbestos would get even stronger and that was
8 dated in what? '75?

9 Q. Yeah. '76.

10 A. '76, yes.

11 Q. And again, encouragement to shift to
12 non-asbestos ceiling textures?

13 A. Correct.

14 Q. And next we have October 19, '76 another
15 Paco Textures memo, Doug Merrill. This one is to
16 Wayne Harp. And it talks about asbestos exposure
17 problems at Hurst. Now, Hurst was the Texas
18 facility, right?

19 A. That is correct.

20 Q. Have you seen that document before?

21 MR. HAZEN: Document number,
22 Mr. Giffins, please.

23 THE WITNESS: Oh, I'm sorry KB -- KM.
24 BB 5743.

25 MR. COON: It's our Document 1130.

1 the Hurst facility at that time?

2 A. Yes. They could have. That's what they
3 explained, and he's suggesting they use SWP, I
4 believe.

5 Q. And do you know when they -- did they
6 eventually convert to an SWP?

7 A. SWP was tried. I don't know when it --
8 how -- there, but it was -- stuff didn't work as
9 well.

10 Q. Okay. They did eventually convert to
11 something that was asbestos free, correct?

12 A. No, they stopped making it.

13 Q. Okay. Just stopped making it --

14 A. Yes, sir.

15 Q. -- at the Hurst facility?

16 A. That was dated what, '76?

17 Q. Right. So you just quit making it at the
18 Hurst facility?

19 A. Yes, sir.

20 Q. But it was still being made asbestos free
21 elsewhere, in California? Didn't y'all continue to
22 make ceiling texture?

23 A. We did -- would you ask me that question
24 again?

25 Q. Sure. Did you continue to make ceiling

1 texture after the late '70s?
 2 A. Where?
 3 Q. Anywhere. Did any of your facilities make
 4 Paco ceiling texture?
 5 A. When you say late '70s, are you talking
 6 prior to '77, or are you talking after '77?
 7 Q. Well, even at this time in '76, where were
 8 they making -- were they making any Paco
 9 asbestos-free ceiling texture?
 10 A. In California.
 11 Q. Right.
 12 A. And they may have been making some there,
 13 but they were also making non -- they were also
 14 making the asbestos one.
 15 Q. And how long did they continue to make an
 16 asbestos-free ceiling texture at any facility?
 17 A. How long?
 18 Q. Sure.
 19 A. Probably until we shut the operations down
 20 in 1982.
 21 Q. Okay. Okay. This is another one. This
 22 is dated January 27, '77.
 23 Counsel, 1050.
 24 Another one from Mr. Merrill. This is to Dean
 25 Pohlenz. Where does Mr. Pohlenz work at?

1 A. Dean worked in Hurst, I believe. This is
 2 monitoring of asbestos exposure, dated January of
 3 '77.
 4 Q. Okay.
 5 A. It is my understanding that Continental
 6 Insurance Company will do outside testing for
 7 asbestos exposure. They're located duh, duh, duh,
 8 duh, Dallas. Phone number is such and such. Please
 9 call them and have the Paco plant checked after the
 10 modification to the baggers has been completed.
 11 Q. Okay. Was this a follow-up to the
 12 previous OSHA inspection at that facility?
 13 A. I would have believed so. This is January
 14 of '77. It refers to OSHA will run the test.
 15 Q. And what else did it say?
 16 A. He says, "But I'm afraid they may spot
 17 something else."
 18 Q. Okay.
 19 A. I think that was more tongue-in-cheek than
 20 anything.
 21 Q. I am going through some of these I think
 22 that we don't need to ask about, in mind of the
 23 hour.
 24 Okay. I had a question on this one. This one
 25 is KM BB 0386, our number is 1159. It says,

1 "Harrison's & Crosfield Pacific Inc." It's dated
 2 November 9, '77. It's an invoice date.
 3 A. Correct.
 4 Q. It indicated that a load of 480 bags of
 5 asbestos --
 6 A. HPO.
 7 Q. -- was shipped to Paco Textures in San
 8 Carlos, California, correct?
 9 A. Correct.
 10 Q. And down here at the bottom it says, "For
 11 resale."
 12 A. Correct.
 13 Q. Do you know who they would have resold
 14 that to, or what that meant?
 15 A. They were the local distributor for Union
 16 Carbide.
 17 Q. That company was?
 18 A. That was, yes.
 19 Q. Okay.
 20 A. And when they sent -- you send anything to
 21 a manufacturer who is going to reuse that raw
 22 material in a product that they then sell, they do
 23 not charge a sales tax, and that's what the purpose
 24 of this -- I assume it's for resale because that
 25 normally is what shows up on invoices where the

1 product is going to be used in manufacture, or to be
 2 resold.
 3 Q. Do you know whether or not in this set of
 4 circumstances, Paco just resold the same asbestos
 5 provided to them from Harrison's elsewhere?
 6 A. I don't know that.
 7 Q. Would they have been using asbestos in
 8 that quantity in 1977 at the San Carlos facility?
 9 A. How many bags?
 10 Q. 480.
 11 A. Yeah. Sure.
 12 Q. Okay. Was this for the --
 13 A. Now, you have to remember this is that
 14 material that -- what's the date on this again?
 15 Q. 11-77.
 16 A. Let me see. I can't read. My eyes are
 17 getting -- failing me.
 18 Q. Yeah.
 19 A. When you get past 63, things start to
 20 happen.
 21 Q. November 9, 1977, Mr. Giffins.
 22 A. This was the material that was tested in
 23 part in the Los Gatos testing.
 24 Q. Okay. Do you know whether or not
 25 Kelly-Moore, through any of its Paco divisions, ever

1 did resell the asbestos that they had bought in bulk
2 for use in the various Paco or Paco products?

3 A. I'm not aware of that and I don't believe
4 they did that. Well, again, I'm not aware of it.

5 Q. Okay. Here is one. This is 1169, dated
6 January 16, '78, from Mr. Wiseman to
7 Mr. Stubb, acknowledges the Hurst plant has ceased
8 production of asbestos-containing materials for
9 Paco.

10 A. That's KM BB 4991.

11 MR. HAZEN: Thank you.

12 A. Subject, production of non-asbestos Paco
13 products, and the Hurst plant has ceased the
14 production of asbestos-containing products for Paco,
15 with the exception of texture paints and ceiling
16 paint -- and ceiling texture.

17 Q. (By Mr. Coon) Now, was that in response
18 to the additional changes with OSHA regulating
19 further restrictions on the use of asbestos
20 products?

21 A. Well, as you recall, we decided in '77 not
22 to make -- to get out of the asbestos business.

23 Q. Right.

24 A. Texture paints were excluded from OSHA and
25 EPA. They were not part of that ban. So we were

1 who the person that signed that -- Mr. Stubbs?

2 A. Svend Stubb, yes.

3 Q. And that was to Mr. Moore?

4 A. That is correct.

5 Q. President of the company still?

6 A. I -- yes, sir.

7 Q. Okay. And it said, "The ban on the
8 manufacture of asbestos-containing joint compounds
9 is now in effect." And they're talking about The
10 Consumer Products Commission ban?

11 A. Consumer Products Safety Commission ban.
12 That is correct.

13 Q. "Our plants manufacture only asbestos-free
14 formulas now." Right?

15 A. On joint compounds.

16 Q. Right. Says, "We now have less than six
17 months to dispose of asbestos-containing joint
18 compounds in stock at our stores."

19 A. That is correct. "A recent inventory of
20 all stores showed current stock of
21 asbestos-containing material to be 282,000 pounds of
22 Dry Powder, and 7,580 containers of Ready-Mix. We
23 plan to take another store inventory on 4-1-78 and
24 then make plans for disposing of any
25 asbestos-containing material left in stock."

1 still able to make those products. What he's saying
2 here is that we are out of the production of
3 asbestos in the joint compounds, but we're going to
4 -- with the exception of the texture paints, and
5 ceiling texture, which was excluded from either
6 OSHA, or the Consumer Products Safety Commission
7 ban, they were going to continue to make those
8 products.

9 Q. Okay. Now, the Consumer Products Safety
10 ban took effect, what was that, January of '78?

11 A. Yes. No. July of --

12 Q. July of '77?

13 A. I think it was July of '78. No, June.

14 They -- they put the ban out effective January the
15 12th, I believe, of '78, and said you could no
16 longer make it and distribute it. But you had six
17 months from that point on to -- the stores had that
18 time to sell out their inventory, which took you
19 through June or July of '78.

20 Q. Okay. And I don't have those particular
21 consumer documents in front of me, I don't believe,
22 but I did want to make sure I understood something.
23 And that takes us to the next document. This is
24 1233. It's dated January 23, '78, another
25 Kelly-Moore memo. This one is from -- can you tell

1 The ban said -- so there was no hardship on
2 manufacturers, or the retailers, the ban said, you
3 cannot make it after 12th of January, but any that's
4 in the field, any that's out in commerce can be
5 disposed of up through June of '78.

6 Q. Okay.

7 A. June 16, I think, of '78.

8 MR. HAZEN: Brent, at this time I
9 think we have already exceeded the limit. What I'd
10 like you to do for me is let's take five minutes
11 break, maybe look at your documents, tell me how
12 much longer you think you need.

13 MR. COON: I need about an hour but
14 I can wrap up in a couple minutes.

15 MR. HAZEN: You want to take a
16 minute to look at them and peruse them, and that way
17 maybe we can -- you can --

18 MR. COON: I'd rather just go
19 through them.

20 MR. HAZEN: Determine what you need.

21 MR. COON: I think we can just go
22 right forward. If you want to go ahead, you're
23 welcome to.

24 MR. HAZEN: Why don't we just take a
25 couple min -- maybe two or three minutes.

1 MR. COON: That's fine.

2 MR. HAZEN: Maybe that will speed it
3 -- you can take a look at it, make sure of the ones
4 you want to cover and then we will come back and we
5 will talk about how much longer you need.

6 MR. COON: That's fine.

7 THE VIDEOGRAPHER: Going off the
8 record at 6:42.

9 (A recess was taken.)

10 THE VIDEOGRAPHER: Back on the
11 record. The time is 6:48.

12 Q. (By Mr. Coon) Mr. Giffins, we have
13 Document 1091. This is December 22, '77, a letter
14 from Mr. Myers, as marketing manager, to Doug
15 Merrill. But it basically talks about the ban
16 taking place from the Consumer Safety folks, I
17 believe?

18 A. Yes.

19 Q. Wasn't that from the Consumer Products
20 Safety Commission?

21 A. No, it was about that -- it's from
22 Mr. Myers, marketing manager for Calidria Asbestos,
23 which would have been Union Carbide.

24 Q. Okay. And it just kind of gets them up to
25 speed on the ban, and the language contained in the

1 hearing procedure. This involves the following
2 steps. This was dated in May of 1977, which talked
3 about the proposal.

4 MR. HAZEN: The document number
5 please?

6 THE WITNESS: Document number is KMX
7 01964.

8 MR. HAZEN: The first one there.

9 THE WITNESS: You want his?

10 MR. HAZEN: Yes.

11 THE WITNESS: Oh, I'm sorry. KMX
12 01963 is ours.

13 MR. COON: Scott, ours is 1093.

14 MR. HAZEN: Okay. 1093.

15 Q. (By Mr. Coon) Okay. So anyway, we could
16 go back through some of these other documents and
17 see a line of letters from Union Carbide to
18 Kelly-Moore that was apprising them of the -- or
19 keeping them updated with respect to the proposals
20 with the ban?

21 MR. NANTZ: Objection.

22 MR. HAZEN: Objection, form.

23 A. That last letter had to do with the
24 proposal, talking about the proposal. And then the
25 following letter in December indicated that this is

1 ban, and how it would relate to some of the product
2 lines?

3 A. He's saying because of the extensive
4 publicity and since we have attempted to keep many
5 of you directly informed, okay, we're going to give
6 you this information, and it's -- and it talks about
7 the ban.

8 Q. Okay. And the ban had actually been
9 proposed for some period of time before it actually
10 took place, right, all through '76, '77?

11 A. Yeah. This is dated December 22nd, and
12 the ban for manufacturing took place the following
13 -- took about two weeks later, 15, 20 days, was to
14 go in effect after that.

15 Q. Right. But --

16 A. We already were well aware.

17 Q. Yeah, they were well aware. In fact, I
18 had other documents I haven't gone back to with you,
19 but there was correspondence back in May of '77
20 discussing those same issues in this document, I
21 think 1093. Again, same type of information, isn't
22 it, just keeping everyone abreast of what had and
23 had not been banned and what the Consumer Product
24 Safety Commission was working on?

25 A. This is talking about the proposal and

1 what the proposal was -- how it was finalized.
2 That's how I interpret those letters.

3 Q. (By Mr. Coon) Sure. May says --

4 MR. NANTZ: Objection,
5 nonresponsive.

6 Q. (By Mr. Coon) -- here is what they're
7 proposing; December letter says here is what the ban
8 actually is now that the statute is done, complete.
9 We know what we're dealing with?

10 MR. NANTZ: Objection, form.

11 A. That's how I interpret it, yes.

12 Q. (By Mr. Coon) And it advised that there
13 was going to be a ban on shipping certain products
14 manufactured after January '78, and then you
15 couldn't sell them after June '78, I think is what
16 you testified to the earlier?

17 A. That's what I indicated earlier, yes.

18 MR. NANTZ: Objection, form.

19 Q. (By Mr. Coon) Okay. So that's
20 consistent with the language of the ban?

21 MR. NANTZ: Objection, form.

22 A. (Indicating.)

23 Q. (By Mr. Coon) Now, we were talking about
24 after the ban took place, which is after the statute
25 is passed, the memos of Kelly-Moore in the following

1 spring and summer, which is, how did they deal with
2 the products that were now subject to the ban?

3 And so that I'll understand, when the Consumer
4 Products Safety Commission came out with the ban on
5 some product lines, it impacted Kelly-Moore with
6 respect to some Paco product lines?

7 A. The joint compounds.

8 Q. The joint compounds?

9 A. That's what they addressed only was the
10 joint compounds.

11 Q. And it was Kelly-Moore's understanding
12 that as a result of this new statute, that there
13 would be an inability for them to continue to sell
14 -- to manufacture or sell that product after a
15 certain time in 1978?

16 MR. HAZEN: Objection, form.

17 A. The ban was very explicit. You could not
18 manufacture, input into commerce anything after, I
19 believe, the 12th of January, and that you had then
20 -- had until June 16th of '78 to sell out the
21 inventory that was in the field.

22 Q. (By Mr. Coon) Okay. Well, let's talk
23 about those two dates. With respect to January of
24 '78, this is the time when you cannot ship anymore
25 back out from the manufacturer?

1 purpose of the ban, was it not?

2 A. There was a concern about that product,
3 and the effect when sanding it, yes.

4 Q. Okay. And nonetheless, as I understand,
5 even though these findings were made, and the ban
6 was put into place, Kelly-Moore did abide by that
7 law by discontinuing the manufacture of an
8 asbestos-containing joint compound, correct?

9 A. Correct.

10 Q. But they also did continue to sell that
11 product at their local stores for the duration of
12 the time that the statute allowed them to which was
13 June 12, 1978?

14 A. That is correct.

15 Q. And do you have any idea how much product
16 Kelly-Moore sold of those joint compounds from the
17 January 16 manufacturing cut-off date, to the June
18 12, '78, no --

19 A. Before I answer that, can I --

20 Q. Yes, sir.

21 A. I'd like to make a point. If you read the
22 Consumer Products Safety Commission ban, they're
23 very emphatic about stating that they understood the
24 impact on businesses by prohibiting the sale, or
25 cleaning out of the inventory, and it did not want

1 A. Ship it out from the manufacturer?

2 Q. From the manufacturer. That's the
3 drop-dead date for getting it out of the
4 manufacturer's facility.

5 A. Whatever that date is, the 12th or 16th.
6 That was the --

7 Q. January 16th.

8 A. Right.

9 Q. Okay. But for stock that had already been
10 sent to Kelly-Moore's shelves, these same joint
11 compounds that were now banned, Kelly-Moore could
12 legally still sell them up through June 12 of 1978?

13 A. That is correct.

14 Q. Couldn't get anymore shipped to you from
15 any of the Paco facilities after January 16th, but
16 you could still sell what you had on your shelves?

17 A. Correct.

18 Q. Or in your inventory, you know, behind the
19 counter or whatever, right?

20 A. What was already in the pipeline, in
21 theory, yes, you could.

22 Q. Okay. Now, Kelly-Moore did understand
23 that the Consumer Products Safety Commission had
24 banned these products as a potential health hazard
25 to those people that were using it? That was the

1 to do anything -- it wasn't just Kelly-Moore, it was
2 the whole industry -- to destroy the economic
3 situation. So they were very emphatic that they
4 give -- they were going to give everybody time to
5 sell it out.

6 They also said, however, that if they had felt
7 at any point from January through June that there
8 was an issue that warranted immediate discontinuance
9 and suspension of the sale of the product, they were
10 in the ability to control that, and they -- they did
11 not -- they had that ability to stop it right then,
12 but they said in all fairness we're going to give
13 you the six months to clear it out.

14 Q. And you believe that Kelly-Moore would
15 have suffered a serious economic hardship by not
16 being able to sell or deplete the remaining stock on
17 their shelves?

18 A. I don't know. I mean, there would have
19 been economic hardship on how to dispose of the
20 product if you had no source to get rid of it.
21 Serious, I don't know if I'd use that terminology,
22 but we were -- we, and everybody else in the
23 industry, functioned exactly -- I know we did.
24 Okay. We did everything we were supposed to do,
25 based on the guidelines that were established.

1 Q. Okay. Do you know whether or not
2 Kelly-Moore took any initiatives after the ban went
3 into effect --

4 MR. HAZEN: Objection.

5 Q. (By Mr. Coon) -- in January 1978 until
6 the time they quit selling the product in June 1978,
7 to provide any additional notices or warnings to
8 those purchasers of the products, of one -- that's
9 the predating question -- one, that the product
10 had been banned by the Consumer Product Safety
11 Commission? Do you know if those types of notices
12 went out to any of the purchasers?

13 MR. HAZEN: Objection, form.

14 A. Between January and June --

15 Q. (By Mr. Coon) Right.

16 A. -- of '78.

17 Q. Right. You quit manufacturing it --

18 A. Right.

19 Q. -- but you could still sell it until June?

20 A. Correct.

21 Q. During that time frame that those products
22 were still on your shelves, did Kelly-Moore provide
23 any types of additional notices to the customers
24 that this was a product that had now been banned for
25 use?

1 Q. To your knowledge -- to your knowledge,
2 though, you didn't go out and put any stickers on
3 the products that were still in the shelves advising
4 them of the ban, correct?

5 A. Well, it already had the sticker on it.

6 Q. No, advising -- advising the purchasers
7 that there was now a ban on this product?

8 A. No. I haven't seen anything of that, but
9 it did have the asbestos, the caution warning on it.

10 Q. The same one we looked at on the other
11 box?

12 A. Yes, sir.

13 Q. Okay. What happened to the product that
14 was still on the shelves in June that Kelly-Moore
15 had been unable to sell for whatever reasons?

16 A. That product that was regulated under the
17 Consumer Products Safety Commission ban, the joint
18 compounds, were returned to the factory.

19 Q. And what did the factory do with them?

20 A. They disposed of them in accordance with
21 whatever the regulations were for disposal.

22 Q. Do you know what the regulations for
23 disposal of those products were?

24 A. Basically it said that you would put the
25 material in a tight container, take it to the land

1 A. There was information that went to the
2 stores that indicated what the ban involved, and as
3 a result of that, what was to happen, what was to
4 transpire from January through June went to the
5 stores.

6 Q. For the edification of the managers and
7 employees of the store --

8 A. To keep them --

9 Q. -- right?

10 A. -- informed, yes.

11 Q. Right. Was there anything done at
12 Kelly-Moore to advise the purchaser of the products
13 that these were products that had now been banned by
14 the Consumer Safety Product Commission?

15 A. I can't answer that, sir.

16 Q. Okay. Do you have any information to
17 indicate that such information was relayed?

18 A. I have not seen anything that was formal
19 information that would -- in that particular case.
20 Now, there was other cases where our customers were
21 advised as to the removal of asbestos in our
22 products, over a certain period during the '70s. We
23 did send out information advising that. As related
24 to this specific issue, I -- I don't -- I can't say.
25 I have not seen it.

1 -- to the dump, to a landfill, and put papers
2 together indicating how much you were taking to the
3 landfill, give a copy of it to the EPA, or the
4 government, take a copy of it to the landfill, and
5 have it buried.

6 Q. It was treated as a hazardous waste?

7 A. It was buried within -- they said in a
8 minimum of six inches of soil on top.

9 Q. Right. Had to be treated like a hazardous
10 waste in compliance with EPA regulations for the
11 disposal of hazardous materials, correct?

12 A. I have been involved with the disposal of
13 hazardous materials, as paint is classified, and to
14 me -- this was hazardous waste disposal, but they
15 even allowed you to put it in sealed bags, and put
16 it in the ground. I don't know if that's safe or
17 not.

18 Q. I'd asked you a question on this, and this
19 may answer it. This is 1233 dated January '78. The
20 question I had had was, did you know how much
21 product you still had on the shelves after you could
22 not manufacture it anymore. I think this
23 Mr. Stubb's letter again, this one to Mr. Moore?

24 A. He's sending it to Mr. Moore, the
25 president, telling him the ban is now in effect, and

1 our plants manufacture only asbestos-free formulas.

2 Q. Okay. And then in the second paragraph it
3 gives them -- tells Mr. Moore how much of the
4 asbestos-containing material they still have in the
5 shelves?

6 A. This was initially indicating what the
7 inventory was at that time in January, yes, or
8 about, thereabouts.

9 Q. So we had 282,000 pounds of the Dry Powder
10 and 7580 pounds of the Ready-mix?

11 A. 70 -- no, 77,580 containers.

12 Q. Oh, containers of the Ready-mix?

13 A. That would have been individual units.

14 Q. One gallon and five gallon?

15 A. Could be, yes.

16 Q. Or -- how big were the containers for the
17 Ready-mix?

18 A. They could be a gallon, or they could be
19 the five gallon.

20 Q. Okay.

21 A. That large cardboard box that you were
22 looking at earlier.

23 Q. So, we know that there was this amount
24 still on the shelves at Kelly-Moore when the ban
25 went into place?

1 Q. And so when was the last time that Paco
2 made asbestos-containing materials?

3 A. Late -- it was '77 or early '78.

4 Q. And in compliance with the Consumer Safety
5 Products mandate?

6 A. That was in joint compounds.

7 Q. Okay.

8 A. Again, we could have continued to make the
9 textures with asbestos in it in areas other than
10 California. We elected not to do that, sir.

11 Q. Okay. Did they quit making the joint
12 compounds and the texture at the same time --

13 A. No.

14 Q. -- that had asbestos in it in late '77?

15 A. I don't really know. I would have to go
16 back and look at the various production records.

17 THE VIDEOGRAPHER: Excuse me, I --

18 MR. COON: That's all right. I have
19 no further questions, sir. Thank you.

20 MR. HAZEN: We will reserve our
21 questions until time of trial.

22 MR. COON: Anybody?

23 THE VIDEOGRAPHER: Going off -- I'm
24 sorry, I need to go off the record. Going off the
25 record at 7:02.

1 A. Correct.

2 Q. And do we know how much of that was sold
3 between January and June?

4 A. Oh, I would say a fair amount, because
5 what was returned was a quantity -- we know how much
6 was returned.

7 Q. Okay. And how much was returned?

8 A. Oh, man, I just looked at that. I just
9 added that number up the other day. I don't recall.
10 It's in my notes. I don't recall. I just added it
11 up.

12 Q. Okay. Was that the last of the
13 manufacturing of asbestos-containing joint compounds
14 by Kelly-Moore and the Paco entity?

15 A. As far as joint compounds?

16 Q. Yes, sir.

17 A. It would have had to be.

18 Q. And was -- what products were still made
19 after the Consumer Products ban that would have
20 contained asbestos?

21 A. You could have still made -- except in
22 California, you could have still made the ceiling
23 and wall textures.

24 Q. And as I --

25 A. We elected not to do that.

ERRATA SHEET

DEPOSITION OF HERBERT R. GIFFINS
MAY 31, 2002

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Signature:

Date:

I, HERBERT R. GIFFINS, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on a separate page and signed by me.

HERBERT R. GIFFINS

THE STATE OF TEXAS
COUNTY OF HARRIS

Before me on this day personally appeared HERBERT R. GIFFINS, known to me or proved to me on the oath of or through to be the person whose name is subscribed to the preceding instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this day of , A.D., 2002.

Notary Public

No. 04769750, which the clerk of the court must tax as costs;

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

[The names of said attorneys have been provided by counsel and are on file at the office of the court reporter.]

That a copy of this certificate was served on all parties by serving same through their attorney of record, pursuant to Rule 203.3 TRCP, on the day of , 2002.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Sworn to by me on the day of , 2002.

Kathy Miller, CSR No. 739
Certificate Expires: 12/31/2002
5300 Memorial Drive, Ste. 600
Houston, Texas 77007
Phone: (713) 861-0203
Fax: (713) 861-2324

NO. B-150,374-AK
WILLIAM L. COTTON, ET AL) IN THE DISTRICT COURT OF
)
VS.) JEFFERSON COUNTY, TEXAS

A.P. GREEN REFRACTORIES)
COMPANY, ET AL) 60TH JUDICIAL DISTRICT

NO. 41,862
VERDA SUTTON AND P.D.) IN THE DISTRICT COURT
SUTTON)

VS.) HARDIN COUNTY, TEXAS

ACandS, INC., ET AL) 356TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
DEPOSITION OF HERBERT R. GIFFINS
TAKEN ON MAY 31, 2002

I, Kathy Miller, CSR, Certification No. 739 in and for the State of Texas, hereby certify to the following:

That the witness, HERBERT R. GIFFINS, was duly sworn by me and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on , 2002, to Mr. Scott Hazen, for examination, signature, and return to the offices of Nell McCallum & Associates, Inc., by , 2002;

That the amount of time used by each party at the deposition is as follows:

Attorney for Plaintiffs:
6.22 hours, Mr. Brent W. Coon

That \$ is the deposition officer's charges for preparing the original deposition transcript and any copies of exhibits, charged to Mr. Brent W. Coon, Texas Bar Association

NO. B-150,374-AK
WILLIAM L. COTTON, ET AL) IN THE DISTRICT COURT OF
)
VS.) JEFFERSON COUNTY, TEXAS
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COMPANY, ET AL) 60TH JUDICIAL DISTRICT

NO. 41,862
VERDA SUTTON AND P.D.) IN THE DISTRICT COURT
SUTTON)

VS.) HARDIN COUNTY, TEXAS

ACandS, INC., ET AL) 356TH JUDICIAL DISTRICT

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on , 2002. If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to , Custodial Attorney.

That \$ is the deposition officer's charge to Mr. Brent W. Coon for preparing the original deposition transcript and any copies of exhibits.

That the deposition was delivered in accordance with Rule 203.J, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this day of , 2002.

KATHY MILLER, CSR, RMR, CRR
Texas CSR No. 739 Exp. 12-31-2002
Nell McCallum & Associates, Inc.
5300 Memorial, Suite 600
Houston, Texas 77010

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