

NO. 19785-BH02

KELLY-MOORE PAINT COMPANY, INC.,

Plaintiff,

vs.

DOW CHEMICAL COMPANY, et al.,

Defendants.

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IN THE DISTRICT OF

BRAZORIA COUNTY, TEXAS

23RD JUDICIAL DISTRICT

DEPOSITION OF ARTHUR VALDEZ

The following deposition was given on the 10th day of December, 2003, commencing at the hour of 9:21 a.m., before Jenna Osborn, a Certified Shorthand Reporter, License Number 8681.

The witness personally appeared at Community Bank, 532 Broadway, King City, California.

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APPEARANCES

For the Plaintiff:

LANIER LAW FIRM

Attorneys At Law

6810 FM 1960 West

Houston, TX 77069

(713) 659-5200

BY: PATRICK N. HAINES, ESQ.

AND

PHILLIP N. SANOV, ESQ.

For the Defendants:

ORRICK, HERRINGTON, & SUTCLIFFE, LLP

Attorneys At Law

666 Fifth Avenue

New York, NY 10103-0001

(212) 506-3764

BY: MORTON D. DUBIN, ESQ.

AND

GLENN JONES, ESQ.

APPEARANCES (CONTINUED)

For the Deponents:

KAZAN, MCCLAIN, EDISON, ABRAMS, FERNANDEZ,
LYONS & FARRISE

Attorneys At Law

171 12th Street, 3rd Floor

Oakland, CA 94607

(510) 465-7728

BY: FRANK FERNANDEZ, ESQ.

1 ARTHUR VALDEZ,
2 testified under penalty of perjury as follows:

3 EXAMINATION BY MR. DUBIN

4 MR. DUBIN: Q. Good morning, sir.

5 A. Good morning.

6 Q. Can you state your name and current address
7 for the record.

8 A. Arthur Valdez, 207 Pearl Street, King City,
9 California 93930.

10 Q. Mr. Valdez, have you ever had your deposition
11 taken before where lawyers were asking you questions and a
12 reporter was taking down the answers?

13 A. No.

14 Q. Let me just explain them briefly. Obviously
15 we are here to ask you some questions about what you
16 remember about your time at Union Carbide and KCAC. The
17 reporter is going to take down your answers. She can only
18 take down verbal answers. Whereas in normal conversations
19 we may shake our head yes or no, if you can verbalize your
20 responses, I would appreciate that.

21 A. Okay.

22 Q. I'm going to try to be as clear as I can in my
23 questions. If there is something you don't understand, ask
24 me to clarify it and I will do so.

25 Is it fair for me to assume if you don't ask me to

1 clarify my question, that you at least believe you
2 understand my question?

3 A. Yes.

4 Q. Thank you.

5 If you need to take any breaks, want to go to the
6 restroom, get water, that's perfectly fine. Let me know and
7 we'll take a break for you, make sure you are comfortable.

8 A. All right.

9 Q. Okay. Are you represented by counsel here
10 today?

11 A. Yes.

12 Q. Okay. And who's that?

13 A. Frank Fernandez.

14 Q. Do you have any other attorneys?

15 A. No.

16 Q. And how did you come to retain Mr. Fernandez?

17 A. My family attorney.

18 Q. Who's your family attorney?

19 A. Miguel Hernandez.

20 Q. And he practices in Salinas; is that right?

21 A. Yes.

22 Q. And why did you decide to retain an attorney?

23 A. To protect ourselves. We knew the plant was
24 shutting down and health concerns. As well as my family.

25 Q. When did you retain Mr. Fernandez?

1 A. I can't really remember. I think it was in
2 April but I'm not sure.

3 Q. And have you paid Mr. Fernandez any money?

4 A. No.

5 Q. In addition to Mr. Fernandez, have you spoken
6 with any other lawyers regarding your time at King City, the
7 mill?

8 A. I spoke to one but I can't remember his name
9 but we didn't get involved in it. I just -- just out there
10 looking for an attorney to protect us.

11 Q. Okay. Do you know who that was?

12 A. I can't remember who it was.

13 Q. Okay. Have you spoken to any attorneys
14 representing Kelly-Moore Company?

15 A. Yes.

16 Q. Who have you spoken to?

17 A. The gentleman over there in the corner.

18 Q. Mr. Sanov?

19 A. Uh-huh.

20 Q. Have you spoken to anybody else?

21 A. No.

22 Q. And when did you first speak to Mr. Sanov?

23 A. At our -- at my house. I can't remember the
24 date.

25 Q. Was it around April or was it more recently?

1 A. More recently I think.

2 Q. Okay. Do you recall whether it was in the
3 last couple months or five or six months?

4 A. I think in the last couple months.

5 Q. And how did you meet Mr. Sanov?

6 A. Mr. Fernandez.

7 Q. So Mr. Fernandez put you in contact with
8 Mr. Sanov?

9 A. Right.

10 Q. And how many times have you met with
11 Mr. Sanov?

12 A. Once.

13 Q. And that was that one time at your house?

14 A. Yes.

15 Q. And what did you discuss with Mr. Sanov?

16 A. Just the conditions at work.

17 Q. Did Mr. Sanov tell you anything about -- you
18 understand that you have been listed as a potential witness
19 in a case brought by Kelly-Moore Corporation against Union
20 Carbide, you understand that?

21 A. Yes.

22 Q. What do you know about Kelly-Moore
23 Corporation?

24 A. I don't. That's the first time I heard about
25 them.

1 Q. You don't know about the asbestos products
2 that Kelly-Moore made?

3 A. No.

4 Q. You don't know what Kelly-Moore told its
5 customers about the health risks of asbestos in their
6 products?

7 A. No.

8 MR. FERNANDEZ: Let me stop for a moment. Give
9 him -- give the gentleman a chance to finish his question.
10 You are almost right on top of each other.

11 THE WITNESS: All right.

12 MR. FERNANDEZ: It's better to just --

13 MR. DUBIN: Q. It makes it more difficult for the
14 reporter to take down that way but I know you are trying
15 your best.

16 A. Yeah.

17 Q. And when did you start working at the King
18 City mill?

19 A. 1977. In May.

20 Q. What were you doing before that?

21 A. Worked at the -- I think I worked at the Wild
22 Horse Truck Stop.

23 Q. And how long were you there?

24 A. About three years. Three or four years.

25 Q. Okay. And what were you doing there?

1 A. Just attendant.

2 Q. And how about before that?

3 A. I worked for Basic Vegetable Plant.

4 Q. And how long were you there?

5 A. I can't really remember. I think three -- I
6 was there three years I think. Two or three years.

7 Q. And how about before that, do you recall?

8 A. I worked at a gasoline station.

9 Q. Were you an attendant there as well?

10 A. Yes.

11 Q. How long was that?

12 A. Not very long. A few months.

13 Q. Do you recall what you did before that?

14 A. No.

15 Q. Okay. Where did you grow up?

16 A. Mendota. I was born in Mendota. I grew up in
17 the valley by Five Points and then San Ardo. And then San
18 Lucas and then got married.

19 Q. Do you have a family around here?

20 A. Yes.

21 Q. Any kids?

22 A. Two.

23 Q. And how old are they?

24 A. One is 25, the other one is 28.

25 Q. Can you tell me what your job responsibilities

1 or job titles were over the time when you worked at Union
2 Carbide and then KCAC.

3 A. Okay. I was -- when I first started?

4 Q. Yeah, if you can tell me as it progressed.

5 A. I was in shipping.

6 Q. Okay.

7 A. And then I moved up to the bagging room.

8 Q. Was that the main bagging room?

9 A. The main bagging room. And then from there I
10 went up to rock fiber operator.

11 MR. FERNANDEZ: Was that rock or --

12 THE WITNESS: Rock fiber operator. And then I
13 switched back and forth between rock fiber operator and RG
14 wet in operator.

15 MR. DUBIN: Q. And does that bring us up to pretty
16 much the end of --

17 A. Yeah.

18 Q. And you worked -- when Union Carbide sold the
19 business in 1985 you continued to work -- you went over to
20 work for KCAC; is that correct?

21 A. Right.

22 Q. You stayed with KCAC until it shut its doors
23 in about what, was it 2002?

24 A. 2002.

25 Q. Have you had any jobs or employment since the

1 time you left KCAC?

2 A. No.

3 MR. FERNANDEZ: Let me just clarify something. I
4 think they actually -- he worked there through part of this
5 year.

6 MR. DUBIN: Okay.

7 Q. During sort of a wind down phase, is that --

8 A. Right.

9 Q. Okay. When you joined Union Carbide at the
10 mill, were you told that there were certain areas of the
11 facility where you were supposed to wear a respirator?

12 A. Yes.

13 Q. What areas do you recall being told to wear a
14 respirator in?

15 A. Main bagging room.

16 Q. Other -- any other areas that you recall?

17 A. RG bagging room.

18 Q. Anything else?

19 A. No.

20 Q. What about the shipping area?

21 A. Just when we were loading containers.

22 Q. Were you told there was a need to do
23 housekeeping to keep dust off of areas in the mill?

24 A. At the end of the shift.

25 Q. And what did that involve?

1 A. Washing down.

2 Q. What would you wash down?

3 A. The floor.

4 Q. Use hoses or --

5 A. Water hoses.

6 Q. Okay. Did you understand that Union Carbide
7 was using something called a wet process in -- in the mill?

8 A. Yes.

9 Q. Okay. What was that?

10 A. Okay. To me that meant the wet process is --
11 before they didn't have that. When it was Union Carbide we
12 had the ore pile right next to the building where we were --
13 you know, where I worked. Okay. And then they started that
14 slurry pit. So to me that was considered the wet process
15 because it came from where the pit was, we'd throw the
16 product inside a hopper and then from there it would go in
17 rock fiber wet. So that's what I considered a wet product.
18 I mean, wet process right there.

19 Q. So it was a wet process until you got to
20 bagging and then it became --

21 A. It was wet process, yeah, it went through the
22 dryers and all.

23 Q. Is it your recollection that they didn't have
24 a wet process when it was at Union Carbide?

25 A. You would consider rock fiber wet process.

1 Because it came in dry and then it went in wet and it would
2 be processed.

3 Q. So when was it that -- your understanding that
4 they adopted a wet process at the mill?

5 A. Okay. If you are considering -- okay. To me
6 rock fiber was wet process because that's where it came in
7 wet. I mean, that's where I -- you know, it was wet. But
8 before it came in there it would be dry, and then it turned
9 into -- you know, because then we would mix it with water
10 and all this stuff. And other things. So that's when it
11 became a wet process.

12 Q. Let me make sure I understand. So there would
13 be an area where they would keep the ore, the raw fiber,
14 right?

15 A. When it was Union Carbide they used to -- like
16 that pile right there would be right by the mill -- right by
17 the -- or the building.

18 Q. Okay.

19 A. Almost by -- almost by where maintenance is.
20 The department. We used to have that pile there and I used
21 to drive a loader, 950 loader and dump it into a belt right
22 there. So it came in to rock fiber dry. And then as soon
23 as it came into the process and then the processing system,
24 you know, it was wet, it became wet. Wet circuit.

25 Q. So it would come into the rock fiber operator,

1 the rock fiber operator would put it into a wet process?

2 A. Yes.

3 Q. And it would stay in a wet process until it
4 went into the bagging room --

5 A. Yes.

6 Q. And some point you are saying they changed it
7 to be more of a wet process so even when it came into the
8 rock fiber operator it was already wet?

9 A. I think when KCAC took over, I'm not sure
10 though, then they put that slurry pit up and moved the ore
11 pile further back to the side and had a slurry pit there.

12 Q. You don't -- you don't recall a year when that
13 occurred?

14 A. I don't have a year. I wouldn't know.

15 Q. Okay. Do you ever recall dust counts being
16 taken at the --

17 A. Yes.

18 Q. Do you recall if that was being done when you
19 first started at the mill?

20 A. I don't think so.

21 Q. Okay. When do you recall the dust counts
22 began to be done?

23 A. I really don't know when it started. I
24 remember them taking it but I can't remember when it was,
25 what year.

1 Q. Okay. Were you ever fitted with a personal
2 monitoring device to see how much dust was around you?

3 A. Yes.

4 Q. Okay. Do you recall about how often that
5 would occur?

6 A. Sometimes when MSHA came, because they took
7 their own tests.

8 Q. And then sometimes --

9 A. And then sometimes they'll just do it, just do
10 it.

11 Q. You mean sometimes Union Carbide would do it
12 even though there were no government regulators there?

13 A. Right.

14 Q. And do you recall ever seeing any -- receiving
15 any notifications regarding dust levels to which you were
16 exposed? In other words, they would say, you know, you have
17 been exposed in excess of five fibers per CC or two fibers
18 per CC, anything like that?

19 A. Occasionally they would put it on the bulletin
20 board.

21 Q. Do you recall anybody else receiving any
22 letters like that?

23 A. No.

24 Q. Did they sometimes tell you that they would
25 take certain corrective actions to make sure that you

1 weren't above whatever -- whatever was set by government
2 agencies?

3 A. They would move us around to certain spots if
4 we got a high test somewhere.

5 Q. Did they ever tell you they were going to
6 improve ventilation in a certain area?

7 A. No.

8 Q. Are you aware of any times in which they would
9 improve ventilation or dust control measures in certain
10 areas of the mill?

11 A. I think they might have done some changes
12 inside the bagging room but I wasn't working in the bagging
13 room so I don't know a lot of the changes they made in
14 there.

15 Q. You mentioned government inspectors. How
16 often would government inspectors be on the facility?

17 A. I don't have no idea how often they would be
18 there. Sometimes I would see them two to three times a
19 year.

20 Q. And did you ever talk to any of the
21 inspectors?

22 A. No.

23 Q. When the inspectors came on the plant were
24 there any changes in the regular working conditions?

25 A. Yes.

1 Q. And what were those?

2 A. If we were bagging a certain open product,
3 especially if it is dusty, we'd stop and switch over to a --
4 instead of powder, pellets, because it doesn't create as
5 much dust. And sometimes if we are working in a certain
6 spot, especially a dusty -- dusty area, we would completely
7 stop that. We'd do clean up.

8 Q. You mentioned there was a large ore pile
9 outside of the facility.

10 A. Right.

11 Q. Was that moved when -- when the OSHA
12 inspectors came or did that stay in the same place?

13 A. That stayed in the same place.

14 Q. Other than changing the process, what you
15 maybe have been making when the regulators were coming, was
16 there anything else -- anything else done?

17 MR. FERNANDEZ: Objection, misstates prior
18 testimony.

19 MR. DUBIN: Q. Okay. Other than the things you
20 already mentioned, was anything else done regarding when
21 government inspectors were there?

22 A. No. Just stopping what we were doing.

23 Q. Okay. Do you know whether or not when Union
24 Carbide conducted its own dust counts whether it ever
25 conducted dust counts when the dusty operations were

1 occurring?

2 A. No.

3 Q. You don't -- you don't know one way or the
4 other?

5 A. On that -- when we used -- when we did that,
6 usually it was the same conditions. We weren't working in
7 certain areas.

8 Q. So you wouldn't be making the dusty
9 products --

10 A. Right.

11 Q. -- when those dust counts were taken?

12 A. Right.

13 Q. Just to be clear, what were the dusty
14 operations?

15 A. That was the RG circuit, the wet in, RG wet
16 in -- no, it wasn't wet in. That was my circuit. That was
17 RG bagging room.

18 Q. RG bagging room?

19 A. Right.

20 Q. So the dusty part of the operations, would
21 those occur in the bagging room?

22 A. Well, there was dust all over the place, it's
23 just those were the main ones. But like I say, when I was
24 working in the RG area, wet in, there is a dryer underneath
25 there. There is holes all over that dryer so there is leaks

1 all over the place. Dust all over the place

2 Q. Just focusing now on the types of operations
3 that you said they wouldn't do during the time when
4 government inspectors came by, where were those operations
5 occurring in the mill?

6 A. Okay. Be in the bagging room, the RG room,
7 then if we were working dust collectors or inside a dryer,
8 or if we are -- you know, any dusty area where -- or if we
9 are doing clean up and there is a pile of asbestos
10 somewhere, that would need to be cleaned up, we would avoid
11 that.

12 Q. Okay. The RG room, was that a bagging room
13 too, RG bagging room?

14 A. It's a bagging room. The RG wet in was above
15 that.

16 Q. And the inside dryer, what would occur there?

17 A. There is enclosures on both ends and they got
18 a seal around it but there is -- dryers are old. Especially
19 the RG circuit, and there was holes and then where the seals
20 were it would still be leaking dust and the dust would be
21 going up to our circuits and then around there also.

22 Q. Now how would -- how would the operation of
23 the inside dryer change when government inspectors would
24 come? What would change?

25 A. We wouldn't -- we wouldn't run that day on

1 that dryer or just wet down with -- if we were -- we were
2 running with wet down area.

3 Q. Was sometimes the inside dryer running when
4 government inspectors came?

5 A. Yeah. When they came in.

6 Q. So did they not wet -- ever wet down the
7 inside dryer area when government inspectors were not there?

8 A. We wouldn't wash down as often.

9 Q. What's the difference -- how often would you
10 wash down the inside --

11 A. Usually it would be at the end of the shift.

12 Q. How often would you do it if a government
13 inspector was coming?

14 A. We would do it right as soon as they were
15 there, we would be cleaning up. Then at the end of the
16 shift also.

17 Q. So the end of the shift -- how often did
18 shifts last, at the end of the day?

19 A. Eight hours.

20 Q. Eight-hour shifts. And --

21 A. And with Union Carbide sometimes we worked
22 over 12 hours. So it would be at the end of the shifts.

23 Q. So you would perform that operation one
24 additional time if the government inspector was coming in,
25 you would do it right before they came in, is that what you

1 are saying?

2 A. The whole plant.

3 Q. But in terms of the inside dryer?

4 A. Not inside the dryer. This is outside the
5 area.

6 Q. Okay. In terms of the inside dryer area.
7 Okay. Near the inside dryer.

8 A. Yeah.

9 MR. FERNANDEZ: I think you are misunderstanding.

10 MR. DUBIN: Okay.

11 MR. FERNANDEZ: When he said inside dryer -- he
12 didn't say inside dryer, he said inside the dryer they would
13 do things actually inside the dryer. Not that there was an
14 inside dryer and an outside dryer.

15 MR. DUBIN: Q. So you would work -- inside the
16 dryer you would wet that down?

17 A. No, we wouldn't be inside the dryer. We are
18 talking about the enclosures because there is doors right
19 there.

20 Q. Right.

21 A. But sometimes there is leaks and there would
22 be a pile like this of just fine powder. So sometimes that
23 would leak out the doors because they weren't sealed tight.
24 So some of that stuff was a pile like this, powder, it would
25 go out there. So sometimes we would wash that area out

1 before the inspectors came.

2 Q. Was there an inside dryer and an outside
3 dryer?

4 A. No. Just the enclosures.

5 Q. The dryer was inside an area?

6 A. No. It's out in the open.

7 Q. Out in the open in the mill?

8 A. Right. Like the RG circuit would be right
9 here, the dryer would be right -- would be right in the open
10 but right outside next door. Just right out of the door.

11 Q. Okay. Outside of the bag --

12 A. Right.

13 Q. That would dry out the product and then the
14 product would be bagged inside the room?

15 A. Yeah. The RG.

16 Q. In both the bagging room and RG bagging room
17 were respirators required?

18 A. Yes.

19 Q. And was the area around the dryer enclosed at
20 all?

21 A. No.

22 Q. Okay. When you got to Union Carbide, do you
23 recall what the respirators that were being used looked
24 like?

25 A. I think they were white. They were just ones

1 you put on and then shape it, you know, to your nose and
2 your mouth.

3 Q. Okay. Were they disposable?

4 A. They were disposable.

5 Q. The entire thing or just the filter?

6 A. Yeah, they were disposable.

7 Q. Okay. Do you recall there ever being
8 different types of respirators that were used in the bagging
9 area?

10 A. I just remember those when we first started.

11 Q. Do you ever recall using -- having respirators
12 used in the bag area where there was air supplied into the
13 respirator?

14 A. No. They showed us that but nobody ever --
15 nothing ever became of it.

16 Q. Were you ever given training on the use of
17 respirators?

18 A. How to put them on, yes.

19 Q. Were you given that training when you first
20 arrived at Union Carbide?

21 A. Yes.

22 Q. And who gave you that training?

23 A. Daryl Garcia.

24 Q. Were you ever shown any videos about
25 respirator use?

1 A. I can't remember that. I know a lot of safety
2 about forklifts and lock out procedures and all these
3 things. I just can't remember about the respirators.

4 Q. When you arrived at Union Carbide were the
5 bagging rooms in separate areas? Were they walled off from
6 the main mill?

7 A. They weren't walled off.

8 Q. Okay. How -- were they separated at all?

9 A. Are you talking about the -- both bagging
10 rooms?

11 Q. The bagging rooms. Were they separate from
12 the main mill?

13 A. Okay. Yeah, the RG circuit was separated from
14 the other.

15 Q. The RG bagging room or RG --

16 A. Okay. They had the main bagging room and then
17 the RG bagging room was in a different area.

18 Q. Was the main bagging room sealed off from the
19 mill?

20 A. Well sealed off. The only thing that was
21 separating that was just plastic -- just -- just plastic,
22 that's all there was.

23 Q. Were there any hard walls?

24 A. Yeah, there was hard walls.

25 Q. And what -- where was the plastic?

1 A. The plastic -- in the main entry when you go
2 in.

3 Q. So there were hard walls and the plastic, and
4 plastic sheathing for a door?

5 A. Well, the sheathings is around there, you
6 know. It wasn't hard wood because asbestos when it came out
7 when we washed down it would go to the other circuits
8 because you know, the -- I don't know what kind of metal
9 that is. It's sort of like sheet metal. It separates every
10 circuit. So when we washed down it would go underneath
11 because they had gaps in there. So it would go in the other
12 rooms, other circuits that were outside. And then that was
13 the entryway. The only thing they had was plastic, rubber
14 strips so the forklift could go in and out. But I can't
15 remember the first -- when I first started working there, I
16 think it was open at that time.

17 Q. So the -- when it was -- when it was sealed
18 off it was through metal, like sheet metal and then there
19 was plastic at the entryway?

20 A. Yeah. Entryway, and then we had another
21 entryway on the other side. But usually that was, you know,
22 when it was hot, that door was left open all the time for
23 the shipping to go in and out to get the pallets.

24 Q. Were there certain times when the bagging room
25 would be dustier than other times?

1 A. Yes.

2 Q. When would it be dustier?

3 A. When we were doing certain products.

4 Q. Which products?

5 A. RG-144, Super-Vis. I can't remember some of
6 the -- HBO. HBO export. And I can't remember some of the
7 other products. Some product called T. That's all I can
8 remember.

9 Q. That would be less dusty when they were using
10 the pelletized product?

11 A. Yeah. It would still be dusty because the
12 bags break.

13 Q. Do you recall ever seeing doctors at the
14 request of Union Carbide during the time you worked there?

15 A. Company physicals.

16 Q. And when was the first time you went for a
17 company physical?

18 A. Can't remember. I just can't remember.

19 Q. Do you recall whether -- whether it was around
20 the time you joined the company?

21 A. I think we got a physical just to check our
22 condition before we went to work, if we were healthy enough
23 to go to work.

24 Q. Do you recall that you had a chest x-ray
25 taken?

1 MR. FERNANDEZ: That first time?

2 MR. DUBIN: Yes.

3 THE WITNESS: I don't think so.

4 MR. DUBIN: Q. Do you recall ever having chest
5 x-rays taken as part of the company physicals?

6 A. Yes.

7 Q. Do you recall what frequency that you would
8 have those taken?

9 A. I can't remember when that started. I think
10 for the young guys it was every two or three years. It
11 might have been longer, I can't remember. And then the
12 older ones I think it might have been every year.

13 Q. And do you recall ever breathing into a tube,
14 taking a breathing test as part of the company physical?

15 A. Yes.

16 Q. When is the first time you recall having that
17 done?

18 A. I can't recall.

19 Q. What doctors did you see as part of the -- of
20 that program, if you can recall?

21 A. Dr. Hostetter. I can't remember his name.
22 Dr. Kumar, I think. And then Dr. Tongsin. Did I say
23 Hostetter?

24 Q. Yes.

25 A. I can't remember the other ones.

1 Q. Were any of the doctors that you saw that you
2 liked better than others?

3 A. No.

4 Q. During the time when you worked at Union
5 Carbide and KCAC, did you ever have a personal physician
6 other than the doctors you saw as part of the company
7 program?

8 A. Just a family doctor.

9 Q. And who was that?

10 A. Miranda. Frederick Miranda.

11 Q. Frederick did you say?

12 A. Yeah.

13 Q. Where is he based?

14 A. He was based here in King City. He is in
15 Salinas now.

16 Q. Have you ever had any major health problems
17 that you know of?

18 A. Well when I went to see -- my last visit the
19 company doctor thought I had a heart condition.

20 Q. Did he explain what kind of a heart condition?

21 A. Didn't pass the stress test so he thought I
22 might have a heart condition.

23 Q. Did he tell you that you have high cholesterol
24 or anything like that?

25 A. No.

1 Q. Have you ever seen your own doctor for your
2 heart condition?

3 A. I think I went to him to just see, and then --
4 but I don't think it was a heart condition. I think it was
5 something else. It was Tongsin that I -- that I talked to
6 and he recommended that I go see a doctor, Dr. Lee in
7 Salinas.

8 Q. Dr. Lee?

9 A. Yeah. And I had a where they shoot that dye
10 in your veins to check and see if there was any -- anything
11 clogged up or anything.

12 Q. Looking for clogged arteries?

13 A. Yeah.

14 Q. Dr. Tongsin recommended you to Dr. Lee?

15 A. Yes.

16 Q. Did they take any additional chest x-rays or
17 anything like that at the time?

18 A. Just normal x-rays.

19 Q. But did Dr. Lee take additional chest x-rays
20 down in Salinas?

21 A. Yes, I think he did take some x-rays down
22 there.

23 Q. Okay. Did they give you any other tests? Did
24 you go through a tube, did they take any scans of you?

25 A. You know, I can't remember. I think I had

1 that done here in King City. I think Tongsin had me do
2 that, go through that.

3 Q. Was that at Mee Memorial Hospital?

4 A. Yeah, I think it was at Mee Memorial.

5 Q. Okay. And did they tell you you had any
6 problems based on the scans or x-rays or anything like that?

7 A. They -- they didn't say anything to me.
8 Whatever information, they gave it to the doctor. They just
9 said my heart looked good. That's the only thing that they
10 said.

11 Q. To your knowledge, do you have any health
12 problems currently as a result of exposure to asbestos?

13 A. No. As far as I know.

14 Q. What information were you given, if any, about
15 the potential health risks of asbestos when you worked at
16 Union Carbide and KCAC?

17 A. When we went into Daryl Garcia, he was our
18 safety engineer, when we first -- I was first employed he
19 mentioned about that.

20 Q. What did he tell you?

21 A. That they were working with short fibers and
22 we didn't have nothing to worry about. The most dangerous
23 stuff was the long fibers.

24 Q. Okay. Did he say the most dangerous stuff was
25 the long fibers?

1 A. That the dangerous stuff was long fibers.

2 Q. Did he tell you there was absolutely no danger
3 from short fibers?

4 A. No.

5 Q. I'm sorry?

6 A. No. He said that nobody ever had any health
7 conditions; that short fiber was fine. You know.

8 Q. Okay. Did he tell you that even if he
9 believed that, that you should take precautions to prevent
10 exposure, overexposure to dust?

11 A. In the dusty areas.

12 Q. He told you you should wear respirators?

13 A. It was mandatory because they had the signs
14 there.

15 Q. Were the signs about respirator use?

16 A. In the main bagging rooms.

17 Q. Were there other signs about -- about avoiding
18 overexposure to dust or keeping the place clean?

19 A. Can you say that again?

20 Q. Were there any other signs about asbestos, you
21 know, any warning signs, any signs about housekeeping?

22 A. Yeah. There were signs about housekeeping.

23 Q. Okay. And what were those -- what did those
24 signs say?

25 A. Just keep -- like the lunch area, keep the

1 area clean.

2 Q. Did they eventually make it a separate lunch
3 area so you would have lunch area away from the asbestos
4 operations?

5 A. When it was Union Carbide we used to have our
6 lunch area inside the mill.

7 Q. Okay. At some point did they make a separate
8 lunch area?

9 A. And then they made a separate lunch area.

10 Q. Do you recall when that was?

11 A. I can't remember when that was. Right after
12 KCAC I think it was.

13 Q. Were you ever given any written materials
14 about asbestos or asbestos health risks?

15 A. I can't remember that. I wouldn't remember
16 getting anything about that. Just usually it was about
17 forklift training, you know, lock out procedures and all
18 this stuff.

19 Q. Do you remember Mr. Larrison? Mr. Larrison?

20 A. I remember him. I just can't -- he was one of
21 the guys there I think.

22 Q. Do you ever recall getting a memo from
23 Mr. Larrison about the need to be careful about asbestos
24 health risks in the mill?

25 A. No.

1 Q. Do you remember at some point that smoking was
2 banned in the King City facility?

3 A. Yes. I don't know how it was in Union
4 Carbide. I think they were allowed to smoke at that time
5 when it first opened. And then they were allowed to smoke,
6 because I was a smoker at the time and we were allowed to
7 smoke outside the fence. But then they changed that, that
8 after awhile because it was -- we had that half hour for
9 lunch or hour for lunch, I can't remember what. So they
10 allowed us to go out and smoke. And then they changed that
11 after, you know, for years, and then we after awhile, after
12 a few years then they said, you know, if we wanted to get
13 off earlier. So they stopped us from -- instead of that
14 half hour or hour we used to have for lunch and they didn't
15 pay for it. Now we are getting off earlier but the -- you
16 know, we couldn't have smoke breaks because it was company
17 time. Because we weren't having that hour anymore. So we
18 couldn't go out and have any smokes, any of the smokers.
19 But the bosses could but we couldn't. The bosses even to
20 the last day they were still going out the fence to smoke,
21 but nobody else could.

22 Q. Did they explain to you why they were banning
23 smoking at the mill?

24 A. No.

25 Q. Do you ever recall getting information about

1 potential health hazards from the combination of smoking and
2 asbestos?

3 A. No.

4 Q. Do you ever recall having a doctor,
5 Dr. Sokomoto, come to the facility and talk about why -- you
6 know -- strike that.

7 Do you recall that as part of the medical
8 monitoring program part of what you needed to do was
9 sometimes spit in a cup and they would test that and see if
10 there were any abnormal cells?

11 A. I remember they did that but then they
12 stopped.

13 Q. Okay. Do you recall the doctor who was
14 running that program ever coming and talking to the workers
15 at King City?

16 A. No, I can't remember that.

17 Q. Do you ever recall people encouraging people
18 not to smoke because of the potential health risks it
19 imposed along with the asbestos?

20 A. No.

21 Q. Going back for a second to what would happen
22 when government regulators came on the facility. You said
23 one of the things that would change was what product was
24 being made?

25 A. Uh-huh.

1 Q. Would that affect the dust anywhere other than
2 the bagging room?

3 A. It would affect everywhere.

4 Q. Why is that?

5 A. Because like I said, on the dryers, they would
6 be leaking so there would be dust. So -- and then there
7 is -- if we did any cleaning because there is always buildup
8 everywhere because of dust, so you would have dust on
9 equipment, you know, or all over the place. You know, it
10 would just be on the equipment. So we wouldn't -- we would
11 avoid creating dust, you know, just anything to stop from --
12 stop from making it dusty.

13 Q. Why would changing the product affect the dust
14 around the dryer?

15 A. Just the leaks. Just the leaks the dryers
16 have.

17 Q. Well all of the asbestos that went into the
18 dryer would be wet anyway, right?

19 A. It wouldn't be wet. It would be going in
20 there wet but it would come out on the other end dry. It
21 went in there -- because I would make the product and then
22 mix it with acid and silicate when I was working the RG wet
23 in, so when it got mixed in there then it would go into some
24 presses and you would make some cake there. But once that
25 cake -- you know, once you clean those presses, it still

1 it's like a cake, so you would smear it on the handles,
2 smear it all over the place. And sometimes you would have
3 press leaks, it would be too much pressure and then all of a
4 sudden they would blow up. So there would be a buildup of
5 asbestos on the ceilings, on the walls, even -- and you
6 couldn't wash everything down because then you would
7 short-circuit all kinds of equipment. So you would have to
8 go and clean it by hand. But there was always a buildup on
9 all the ceilings.

10 Q. Just trying to understand, when the -- when --
11 for instance, when they were making a pelletized product
12 would it already be pelletized and dry when it went into the
13 dryer?

14 A. No.

15 Q. So basically they had the same asbestos, no
16 matter what products you were making?

17 A. Right.

18 Q. And the same amount of asbestos would
19 presumably leak out or not leak out no matter what you were
20 making?

21 A. Right.

22 Q. In your opinion was it possible to keep any
23 dust out of the King City mill?

24 A. No.

25 Q. Did you have a sense that people were trying

1 to do things to reduce the amount of dust that was there?

2 A. Well, they changed things around. Like I
3 said, they added some mist, but we hardly used them. I
4 think they caused problems with the equipment or something
5 so they stopped that, using the mists.

6 Q. Were there supervisors that you liked or
7 trusted more than others?

8 A. I got along with all of them. You know, I had
9 problems with one, yes, at one time. And that was it. Just
10 because of my smoking.

11 Q. Are there people that you had particularly
12 good memories about being honest or trustworthy people who
13 you worked with?

14 A. I didn't trust anybody that was salaried. I
15 got along with them. Some of them were friends of mine but
16 I just...

17 Q. Did you know John Myers?

18 A. Yes.

19 Q. What's your opinion of John Myers?

20 A. As a friend? He's a good guy. At work,
21 that's a different story. My wife gets -- like I say, my
22 wife, she is a good friend of theirs. She works at a
23 restaurant and John Myers' wife hugs her all the time. I
24 invited him to my 25th anniversary instead of the company
25 party. He thought it was boring so he went to our party.

1 Q. You said that somebody had indicated to you
2 that because the asbestos was short fiber it was safe; is
3 that correct?

4 A. Right.

5 Q. That was Daryl Garcia?

6 A. Daryl Garcia. All the way to the end.

7 Q. Is there anybody else that you remember
8 telling you that?

9 A. Ray Groggen.

10 Q. When was that?

11 A. I can't remember that. John Myers. Ed
12 Kleber.

13 Q. When do you recall John Myers telling you
14 that?

15 A. That was years ago. That was years ago. I
16 can't remember when it was.

17 Q. These people who were telling you that they
18 thought the short fiber asbestos was safe, would they also
19 go in areas of the plant or mill where there was dust?

20 A. Yes. They would wear the respirators in the
21 main bagging rooms.

22 Q. What about other areas where there was dust,
23 would they go in those areas?

24 A. Yes.

25 Q. And those times were they not wearing

1 respirators?

2 A. No.

3 Q. Did some of them have kids who they had also
4 working in the mill?

5 A. Yes.

6 Q. Was it your impression that they believed what
7 they were telling you about the fact that short fiber
8 asbestos wasn't going to hurt you?

9 A. Yes.

10 Q. During the time when you worked at -- just
11 Union Carbide. Let's talk about 1974 to 1985. Did you ever
12 see any information about asbestos on the news or TV or
13 anything like that?

14 A. I know they brought out something about the
15 school when they found asbestos outside the school.

16 Q. When did that occur?

17 A. I think it was sometime in the last couple of
18 years I think. But I'm not really sure. The precautions
19 the company took was they stopped hauling product at that
20 time. They didn't want the trucks coming over there so they
21 wouldn't be looking like it was their asbestos.

22 Q. Okay. That was KCAC?

23 A. That was KCAC.

24 Q. And the asbestos in the schools, that was
25 insulation material?

1 A. I don't know what it was. I know they made a
2 big deal about it.

3 Q. Okay. Do you have an understanding that the
4 asbestos that was milled at King City wasn't used in the
5 insulation materials?

6 A. No. I really never knew what they were making
7 out of it.

8 Q. Okay. You don't know what types of products
9 were used in -- were made with Union Carbide asbestos?

10 A. All I know is some kind of -- they showed us
11 some kind of material, something for walls or something like
12 that. That's all.

13 Q. And you understood that Union Carbide sold
14 raw -- sold basically raw asbestos, just the stuff that you
15 put in the bags, is that --

16 A. Yes.

17 Q. And Union Carbide would sell that to other
18 companies that would make asbestos products?

19 A. Right.

20 Q. You know that Kelly-Moore was a company that
21 used asbestos in part from Union Carbide?

22 A. No.

23 Q. Let me ask you, what do you know about the
24 health of other people who worked in the facility? Is there
25 anybody who you believe has a condition that may have been

1 caused by exposure to asbestos?

2 A. Okay. I know some people that have died of
3 cancer. And I've known -- I know some guys, people,
4 co-workers that have had some scarring in their lungs. I
5 just talked to one employee just Sunday, Ed Sinclair, and I
6 just mentioned to him and he said that he went for a
7 physical and they found a lot of scarring in his lungs. And
8 doctor asked him if he worked with asbestos.

9 Q. Well let's take these in turn. First the
10 people who died of cancer. Are you aware of a cancer called
11 mesothelioma? Have you ever heard of that before?

12 A. No.

13 Q. Have you ever heard of anybody who you worked
14 with at Union Carbide or KCAC getting a cancer called
15 mesothelioma?

16 A. I don't know if that was the cancer that
17 somebody mentioned. That employee passed away -- I don't
18 know if he passed away by that but that he had some --
19 something like that. That was Paul Whitlock.

20 Q. Okay. Is it your understanding that
21 Mr. Whitlock died from cancer?

22 A. Heart disease. I thought it was heart
23 disease.

24 Q. Did you know that he died shortly after having
25 one of multiple heart surgeries?

1 MR. HAINES: Object to the form of the question.

2 THE WITNESS: I can't remember.

3 MR. DUBIN: Q. Okay. What sorts of cancer do you
4 know of people having died from it? Who do you know who has
5 died from cancer?

6 A. As far as the company told us it was lung
7 cancer, they said it was -- I think it was Jim Stanford.
8 But they told us it was his smoking, lung cancer.

9 Q. You were aware that he was a heavy smoker?

10 A. He was a smoker, yeah.

11 Q. And you understand that smoking can cause lung
12 cancer, right?

13 A. Yeah.

14 Q. Are there other -- and do you know anybody who
15 has ever gotten lung cancer that didn't work at the asbestos
16 mill or mine?

17 A. No.

18 Q. Are you aware that it occurs in people who are
19 not exposed to asbestos at all, lung cancer?

20 A. No.

21 Q. Any other types of cancer, anybody else that
22 you think has died of cancer?

23 A. There was Fred Olivos.

24 Q. Do you know what type of cancer he died of?

25 A. I have no idea.

1 Q. Do you know whether he was a smoker?

2 A. Yes.

3 Q. Was he a smoker?

4 A. Yes.

5 Q. Let's talk about the lung scarring. How did
6 you talk to -- end up talking to Mr. Sinclair?

7 A. Somebody told me about him and I wanted to
8 talk to him. He was a co-worker of ours.

9 Q. Who told you about him?

10 A. George Larson.

11 Q. What did he tell you about him?

12 A. He just said you ought to talk to Jim Sinclair
13 because I talked to him awhile back and he said something
14 about a physical, that he went to doctors and mentioned
15 something about a lot of scarring in his lungs.

16 Q. Do you know where he lives currently?

17 A. San Ardo.

18 Q. Did you meet with him or spoke to him on the
19 phone?

20 A. I saw him in Paso Robles doing some Christmas
21 shopping. He just walked out and I haven't seen him for
22 years.

23 Q. So it was a coincidental event?

24 A. Right.

25 Q. And obviously you don't know what his medical

1 condition is or isn't?

2 A. No, just what he told me.

3 Q. And you don't know about any reviews of his
4 chest x-rays that have been done in the past either by --

5 A. No.

6 Q. -- doctors who are affiliated with Union
7 Carbide or other doctors?

8 A. No.

9 Q. Anybody else who you believe has lung
10 scarring?

11 A. George Navarro.

12 Q. What do you know about that?

13 A. Just that he -- he had his physical done -- he
14 did his company physical and the company doctor mentioned
15 that they saw a spot on his lungs. So he recommended him to
16 go see a heart specialist -- I mean a lung specialist. So
17 he went over there and got an MRI and he thought that
18 nothing was wrong with him. And I said well, what did it
19 say? And he said well, I'll show you the thing. So he
20 showed it and I saw scarring and plaque. And I said I think
21 that's some kind of condition of -- some kind of asbestos
22 condition. And I know the company -- I mean, the company
23 got -- I hate to say the word but pissed off because they
24 mentioned -- the doctor mentioned him to go check an expert
25 on lung disease. Daryl Garcia.

1 Q. Right.

2 And do you have a copy of that report?

3 MR. FERNANDEZ: Do you have a copy? Yes or no.

4 THE WITNESS: No, I don't have one.

5 MR. DUBIN: Q. Did you give a copy of it to
6 anybody else?

7 A. No.

8 Q. And have you been contacting other employees
9 who used to work at the King City mill and mine about their
10 experiences there to discuss issues about the working
11 conditions?

12 A. Yes.

13 Q. Okay. Who have you contacted?

14 A. Petra. What's her name now. I can't remember
15 her name right now.

16 Q. Formerly Petra Averly?

17 A. Yeah. Petra Averly. She is the one that got
18 me in contact with -- okay. There was another one, Gabriele
19 Acosta. She got -- she got me in contact with him because I
20 needed -- I wanted to talk to him because he had cancer,
21 some form of cancer. And so she contacted me and then we
22 got concerned after we talked to him about Union Carbide and
23 KCAC.

24 Q. Okay. Who else have you talked to?

25 A. I talked to Dolores Hernandez.

1 Q. Who else?

2 A. James Flores.

3 Q. Why did you contact Ms. Hernandez?

4 A. Hernandez?

5 Q. Yes.

6 A. For the same concerns that I had about the
7 health -- health wise, that we needed to get some type of
8 protection and it was up to them if they wanted to or not.
9 If they wanted to seek legal advice.

10 Q. Why her specifically?

11 A. Not just her.

12 Q. Okay. Was there any particular reason that
13 you called her and --

14 A. No.

15 Q. And James Flores.

16 A. Right. And his brother.

17 Q. What's his brother's name?

18 A. Named after his dad. I forgot about him too.
19 He died of some form of cancer -- I am not sure but I think
20 it was cancer.

21 Q. His brother's name is Isabel?

22 A. Isabel.

23 Q. Who else?

24 A. David Aquitas.

25 Q. Okay.

1 A. John Gordino.

2 Q. Okay.

3 A. Trini Cruz.

4 Q. Anybody else?

5 A. Louie Flores.

6 Q. No relationship with James and Isabel?

7 A. No. It wasn't Louie Flores. It was Louie
8 Torres. Not Flores. Jimmy Vasquez. Then -- well okay,
9 some of us we already talked. Some of the other employees,
10 like Ernie and me, George, Roy Rodriguez, we talked about
11 this.

12 Q. Right.

13 A. So we're sort of like a group there. Who
14 else. I talked to Pedro. I didn't talk to Pedro. That's
15 John Gordino's brother also. John Gordino. And I talked to
16 George Larson. Like I said, Ed Sinclair. Who else was
17 there. Manual Zigobia. Let me see who else there was. I
18 think that's it.

19 Q. What period of time have you had these
20 conversations?

21 A. Through the months.

22 Q. Last couple months?

23 A. Weeks. Yeah.

24 Q. Have you given these people the name of your
25 lawyer?

1 A. Yeah. They wanted to talk to him. It was --
2 I left them the option if they wanted to talk to him. If
3 they didn't want to.

4 Q. Mr. Fernandez?

5 A. Yes.

6 MR. DUBIN: I think we are pretty much done. Let's
7 take a five-minute break.

8 (Recess held.)

9 MR. DUBIN: Q. You talked to a variety of people.
10 Is there anything that stands out in your mind of a specific
11 thing that any of them told you?

12 MR. FERNANDEZ: You talking about co-workers?

13 MR. DUBIN: Right, the co-workers over the last
14 month or so.

15 THE WITNESS: You know, I really didn't get into
16 it. I just asked them, you know, the -- there was a group
17 of us that were protecting ourselves and our families. If
18 they wanted to be involved in it.

19 MR. DUBIN: Q. And of the people that you recall
20 speaking to, how many of them do you recall indicating yeah,
21 they did want to be involved in it?

22 A. All of them. Not all of them. There was some
23 that were thinking about it.

24 Q. And which ones were those?

25 A. George Larson, Pedro Gordino, Jim Plaskett, Ed

1 Sinclair. A lot of them didn't want to say much.
2 They -- they feel loyalty to the company I guess, for some
3 reason.

4 Q. How long did you smoke for?

5 A. I smoked probably for close to 20 years.

6 Q. When did you start and stop?

7 A. You know what, I shouldn't say 20 years. More
8 like about 15 years. I stopped -- God, it's been over ten
9 years.

10 Q. And when you smoked how much did you smoke?

11 A. Not even a pack a day. Probably just about a
12 half a pack.

13 Q. What brand?

14 A. Marlboro.

15 Q. Reds?

16 A. Yes.

17 MR. DUBIN: Okay. I think that's all I have for
18 you.

19

20 EXAMINATION BY MR. HAINES

21 MR. HAINES: Q. I didn't have a chance to
22 introduce myself before the deposition. I am Patrick
23 Haines, I represent Kelly-Moore in this case. I will have a
24 few questions for you.

25 I want to focus if I can, sir, on the time frame

1 while you worked for Union Carbide from 1977 to 1985. Okay?

2 A. Uh-huh.

3 Q. You said a little bit ago that John Myers was
4 different at work or he's a different story about what he
5 was like at work. What did you mean by that?

6 A. Because sometimes when we'd have a complaint
7 or something about work-related about the dust or something,
8 some of the bosses they normally usually said, you know, if
9 you don't like what's going on, there is the gate. It works
10 both ways. So that kind of gave me a hint to keep my mouth
11 shut. So we got the hint not to say very much.

12 Q. Were you really encouraged to make complaints
13 about the levels of dust?

14 A. Made a complaint one time when -- a few times
15 when we were -- I was working at the RG wet in because we
16 had to eat our lunch there and we were working around there,
17 there would be dust flying all over the place and you could
18 see particles all over. And we started complaining about
19 that. So we still worked like that without no respirators,
20 it's just that they changed -- they allowed us to go there
21 and eat in the lunch room. But that was almost the same
22 because we used to go in there with our coveralls anyway
23 with our powder. So basically about the same where we ate
24 anyway.

25 Q. What would you say from working out there all

1 those years were the areas what you thought were the
2 heaviest exposure to asbestos?

3 A. There was dust everywhere but the heaviest
4 concentration was the main bagging rooms. The RG bagging
5 room, plus the main bagging room.

6 Q. And that's where you are actually filling the
7 sacks full of the asbestos product?

8 A. Right.

9 Q. And you did that job yourself, didn't you?

10 A. I started there and off and on when somebody
11 went on vacation or somebody was sick, I would work also
12 there.

13 Q. Okay.

14 A. Since I worked in almost all the circuits.

15 Q. Sir, how old are you today?

16 A. Fifty-one.

17 Q. Okay. Has anyone ever explained to you that
18 asbestos disease is what they call latent diseases, they
19 take a long time to occur from the time they are exposed?

20 A. No.

21 Q. Did anyone from Union Carbide ever explain to
22 you the different types of diseases that asbestos might
23 cause in a person?

24 A. No.

25 Q. Earlier today you were testifying that you

1 said that if you were wearing a personal monitor and there
2 were some high tests you would be instructed to move to a
3 different area. What did you mean, sir?

4 A. One time a co-worker and I, Manuel Gudia, had
5 a high count and he was working in the RG wet in. And when
6 that -- when that MSHA guy came he mentioned that there was
7 a high count so he wanted to retest it again. So instead of
8 me working in the RG circuit I went to a different circuit
9 because he was on vacation and I took over for him. So I
10 had to move in a different area that had less -- less of a
11 dust count. Not as much exposure to it.

12 Q. Who would give you the instructions when MSHA
13 or OSHA came to the plant to do your job differently than
14 you did when they weren't in the plant?

15 MR. DUBIN: Objection, form.

16 You can respond.

17 MR. HAINES: Q. You can answer.

18 A. Usually my shifter. After Daryl Garcia told
19 them or whoever was above him.

20 Q. And your shifter would be your shift
21 supervisor?

22 A. Yeah, my shift supervisor. And sometimes
23 they'll personally come and tell us. Daryl Garcia or Ray
24 Groggen or one of them.

25 Q. Okay. You said earlier that you were shown a

1 respirator that has some type of air line hoses going into
2 it but it was never used. What was your understanding of
3 why it was never used?

4 A. I have no idea. I thought it was for
5 enclosures, you know, like some bins when we had to clean
6 them out or something like that. I thought it was for that.
7 Or in the bagging room. But never -- anything -- nothing
8 ever became of it. I remember seeing it but through the
9 years I have never seen anybody use it.

10 Q. The masks that you were provided when you
11 first started working with the company, were they just like
12 a paper kind of a dust mask?

13 A. Right.

14 MR. DUBIN: Objection, form.

15 MR. HAINES: Q. Did the mask you used when you
16 first started with the company have a -- one rubber band?

17 A. Yeah.

18 Q. Hung over your face like a filter like paper?

19 A. Yes.

20 Q. It was disposable, meant to be used and thrown
21 away?

22 A. Yes. But usually we didn't -- we used it a
23 lot more often. We didn't just use it one day and throw it
24 away. We wore it for awhile.

25 Q. Did the company encourage you to wear it more

1 than one day?

2 MR. DUBIN: Objection to form.

3 THE WITNESS: No.

4 MR. HAINES: Q. How come you used it that way?

5 A. Trying to save the company money I guess.

6 Q. Being a good employee?

7 A. Yeah, just try to keep it clean. You couldn't
8 keep it clean but if I wasn't working too much of a dusty
9 area, I would just have it sitting around there.

10 Q. And I think you said that the -- did the
11 company provide you with some type of coveralls?

12 A. Coveralls -- I -- to me the coveralls were so
13 paper thin that even when some areas where we used to go in,
14 once you dust it off like that, forget it. It would be
15 right through your pants. It would go right through your
16 pants. And when you went home you could see the white on
17 your Levis.

18 Q. Did you wear street clothes underneath the
19 coveralls while you were working?

20 A. Yes.

21 Q. And you wore those clothes home?

22 A. Yes.

23 Q. Could you sometimes see there was asbestos on
24 the street clothes that you were going home with?

25 A. Well, I was the type that I always wanted to

1 keep myself clean. I didn't want -- you know, because you'd
2 see dust all over you so, of course, you would try to, you
3 know, not try to take some of that home. But you would
4 always take it home.

5 Q. You couldn't help it?

6 A. Yeah, you couldn't help it. You would have it
7 in your hair, you would -- especially if a bag busted on
8 you, you would have it packed in your ears or anywhere. The
9 respirator wouldn't help. Because that's -- that's -- once
10 those bags blew up, that pressure, that coming up to you and
11 hitting you in the face, isn't something nice. So you know,
12 you would be -- you could almost taste that stuff.

13 Q. Did you ever see lawyers come out to the plant
14 and go through files or clean out -- throw away documents?

15 A. Yes.

16 Q. Okay.

17 A. Personally throw away documents. I don't
18 know. I used to see them in the trash bin and Daryl Garcia
19 and some of the office people but I don't know what they
20 were throwing.

21 Q. Did they -- did you ever have an understanding
22 of what those folks were doing at the plant?

23 A. They said something about -- that was when we
24 found out that KCAC was going to shut down. I think
25 something about lawsuits or something. Union Carbide

1 lawsuits. That's what my understanding was.

2 Q. And you were -- they were seen going toward
3 the dumpsters with stuff?

4 A. Those paralegals. I -- because there was a
5 trailer out there and that's where they kept all the papers.
6 And there was a trash bin right in front. I know that they
7 would be taking the papers down to the office and from there
8 I would see people throwing stuff in the trash. But we
9 couldn't get near there because they kept an eye on
10 everybody.

11 Q. Sure.

12 Sir, I've got some photographs here that I'd like
13 to show you. I'm going to just kind of show them to you one
14 by one. And if you could tell me if you recognize what's in
15 the picture, tell me, if you don't, tell me you don't.

16 MR. HAINES: This first photograph I'm going to
17 mark as number 1.

18 (Whereupon, Deposition Exhibit 1, as
19 described in the index, was marked for
20 identification.)

21 MR. HAINES: Q. Can you tell me who this handsome
22 gentleman is?

23 A. That's me.

24 Q. Is that a picture of you in the coveralls that
25 you were describing earlier?

1 A. Yes.

2 Q. And as I think the picture indicates these are
3 actually short-sleeved coveralls where you can see your arms
4 are bare.

5 A. Right.

6 Q. And it has a little dust here and there. Is
7 that what your uniform would look like at the end of a
8 workday usually?

9 A. Most of the time, and a lot worse than that.
10 It depended where we were at.

11 Q. This respirator that you are wearing here that
12 has the canister on each side, is that the type of
13 respirator that you were given in the later years?

14 A. Yes.

15 Q. That's not what you wore when you first
16 started working?

17 A. No.

18 (Whereupon, Deposition Exhibit 2, as
19 described in the index, was marked for
20 identification.)

21 MR. HAINES: Q. Photograph number 2, is this
22 basically the backside of you?

23 A. Yes.

24 Q. Okay. What time frame are we looking at as
25 far as this -- is this what you wore for a number of years?

1 A. Yeah. We wore those coveralls till, you
2 know -- some of them sometimes would have tears in them. So
3 the only time that we would get new ones is if it is really,
4 really torn apart.

5 Q. Okay.

6 A. Because we used to dry them. Wash them and
7 dry them at work if we didn't have enough. And sometimes
8 they would shrink. So -- well even when they took them down
9 to the cleaners they would shrink and they would be so --
10 this off your feet. So that was right after MSHA, the
11 next -- the following day that's how we would have looked,
12 probably a lot worse if -- if we were doing this when MSHA
13 came. That's the -- that's kind of how I would have looked
14 if they took an air sample but they didn't. That's when we
15 stopped doing that.

16 Q. Did you actually have washers and dryers there
17 at the plant you could clean clothes in?

18 A. Yes.

19 Q. And the employees washed their own clothes?

20 A. If we were short on coveralls, if they didn't
21 bring enough coveralls for us.

22 (Whereupon, Deposition Exhibit 3, as
23 described in the index, was marked for
24 identification.)

25 MR. HAINES: Q. Tell me if you can, you see here

1 in picture number 3. What is that?

2 A. That's the RG wet in dryer.

3 Q. Is that the area that you actually worked in
4 at times?

5 A. Yes. When we had -- if it got plugged up we'd
6 have to go in there and unplug it.

7 Q. What are these little chunks?

8 A. Pellets.

9 Q. Okay. That's the actual pellets being formed?

10 A. Right.

11 Q. And this is the dryer, the metal part here?

12 A. Right.

13 Q. Did you testify earlier something about dryers
14 having holes in them?

15 A. Yeah. Okay. Right where they are standing --
16 well, right here.

17 Q. Uh-huh.

18 A. Okay. There is a screw that will get this
19 feed in there and sometimes it will plug up. But there is a
20 seal right supposed to be around here, this ring here. And
21 lot of times it was worn out. So what you see right here,
22 some of this dust, it would be going in there. That's where
23 I said at the end of the enclosure -- at the start of the
24 enclosure you'll have a lot of wet -- lot of cake, sometimes
25 it will plug up and it will spill over. But some of them --

1 the screens had little holes like this. But sometimes it
2 will leak on the sides. So on the front of the enclosure
3 there would be like cake. So that would be there till
4 weeks, sometimes months, till they decided to clean them.
5 And then the other side of the dryer, on this end where the
6 seals are, there would be leaks around there. And then
7 that's where I was telling you there was really fine powder.
8 Sometimes it would be up to about five feet high and we
9 would have to be in there. But as soon as you use the water
10 hose, I mean that stuff would like fluff. It would just
11 shoot all over the place. Just like a couple times the dust
12 collectors blew up on us and it just filled up the whole
13 parking lot.

14 Q. How did the dust collectors end up blowing up?

15 A. Just dust -- either dust leak, if there is a
16 dust leak on one of the socks, it just throw dust all over.
17 And one time an employee thought the -- that was when we
18 were shutting down and the -- we were shutting down, turn on
19 all the equipment when we shut down and one of the
20 co-workers thought there was socks in the dust collector and
21 there wasn't. And as soon as he started that mill up and
22 the fans got that, I mean, it just -- just like it looked
23 right there, all that dirt. That's how it looked. They
24 were washing cars all day and we were with our water hoses
25 all over the place, washing every inch of that place.

1 Q. Because without the socks it just basically is
2 a giant fan?

3 A. Right. There is nothing there. It goes right
4 out the fans, so...

5 (Whereupon, Deposition Exhibit 4, as
6 described in the index, was marked for
7 identification.)

8 MR. HAINES: Q. Okay. Number 4 here we have a
9 front end loader with a load of something. What is that
10 stuff in the front end loader?

11 A. That is -- that could be cake from one of the
12 dryers. That's what it looks like to me.

13 Q. Okay.

14 A. Or it could have been from some spill that
15 they were cleaning up.

16 Q. Did y'all have to clean up the plant
17 yourselves as the employees?

18 A. Yes.

19 Q. And did y'all sometimes have to sweep it up,
20 dry sweep it and --

21 A. Yes.

22 (Whereupon, Deposition Exhibit 5, as
23 described in the index, was marked for
24 identification.)

25 MR. HAINES: Q. Tell me what we see here in

1 picture number 5, if you could.

2 A. That was John Gordino washing some of the
3 equipment we are getting ready to sell or give away.

4 Q. Would this be when the plant was shutting
5 down?

6 A. That's when it was shutting down.

7 Q. Were they pressure washing the stuff off the
8 equipment?

9 A. Pressure washing.

10 Q. After pressure washing had you been able to
11 get rid of all the asbestos that had been caked on for all
12 those years?

13 A. As you notice that was probably some of the
14 stuff that we cleaned. They kept -- to me I could tell it
15 was, you know, that was no calcium. They kept telling us --
16 Daryl Garcia even after the last, when we mentioned it to
17 him he said no, there is nothing leaving this yard because I
18 carry a pocket knife with me and I scrape it. I make sure
19 there is nothing leaving this yard with asbestos. That's
20 when it was leaving the yard.

21 Q. And Daryl Garcia, he was the gentleman that
22 had been working there since Union Carbide --

23 A. Right. As far as I know.

24 Q. Had been a Union Carbide employee?

25 A. He was my shifter at the end.

1 (Whereupon, Deposition Exhibit 6, as
2 described in the index, was marked for
3 identification.)

4 MR. HAINES: Q. And picture 6, is that more of the
5 equipment that was being sold that y'all had tried to clean?

6 A. That is the cleaning product.

7 Q. The bottom picture.

8 A. This is also. I think we hadn't washed this
9 because to me it looks like almost if we was. But this was
10 equipment that we did. I think this might have been when we
11 were getting ready to clean. But they took some loads like
12 this without even being cleaned.

13 Q. Who did they sell that stuff to?

14 A. Some guy named The Junk Man. They called him
15 The Junk Man. When we had that last meeting because we
16 wanted to know about when the plant was shutting down and,
17 you know, and co-worker mentioned about -- about short
18 fibers, long fibers again. And he said -- because one
19 co-worker went over there and mentioned and said, you know,
20 you better have those attorneys on retainers because sooner
21 or later it's going to come back and bite you in the ass
22 because there is a lot of stuff leaving this yard with
23 asbestos. And you can't say it's not. Then he wanted to
24 know if they had permits, where were the inspectors that
25 were supposed to go there and check what we were doing. And

1 he says well, hey, if you don't like it, you can be our
2 inspector. Then they got into it a little bit right there.
3 That was Ray Groggen and Jeff Harris. And Jeff Harris went
4 over there and told them see, this is what kind of attitude
5 we have to put up with, that kind of bullshit, when we have
6 to say something. And Ed the boss was there, that's when
7 Daryl Garcia said there is nothing leaving this yard, it is
8 all calcium. I always go in with a knife and I scrape it
9 and if there is nothing there, I don't allow it to go out.
10 That's how it looked. The only thing he said that had long
11 fibers was the -- the insulation on the acid tank. That was
12 the only thing that had long fibers. Was the insulation of
13 the acid tank I think it was, that was it.

14 Q. And from 1977 throughout your whole career you
15 were told that short fiber asbestos was perfectly safe?

16 A. Right. And then on this, like I said about
17 this Junk Man, he got mad after the meeting when they
18 brought that up. They said okay, they started bringing the
19 hazardous waste containers to throw it, but the Junk Man
20 still took -- that day they said they weren't going to allow
21 it anymore. That following day I was on vacation but a
22 co-worker told me he came in and got a load -- half a load,
23 and he got pissed off because they didn't give him the
24 aluminum. So he left mad. So he took half the load. But
25 the following Monday he came back and took a load of

1 equipment, plus I think it might have been this load here of
2 aluminum without even being washed. And that was the last
3 time we saw him. That was the last load he ever took. I
4 think we only took -- I think hazardous waste wise after
5 that was only about three or four loads I think. That was
6 it. Everything else was buried. Either buried or sold.

7 Q. And the company, did they have a landfill
8 behind the plant where they buried the asbestos tailings and
9 scrap?

10 A. Yes.

11 Q. Had they done that pretty much the whole time
12 you were out there at the plant?

13 A. Not till the end. We buried product out
14 there, tills, the tills, and certain products, bags and
15 stuff. Because one time one employee -- boss, shifter left
16 out I don't know how many tons of -- over 100 tons I think
17 of asbestos outside, bagged SG -- I think SG100 and it got
18 soaked and were wet and couldn't use it anymore so they
19 dumped everything over the hill. All of it.

20 MR. HAINES: I will have a few more questions for
21 you, sir. But let me take a break for a few minutes.

22 (Recess held.)

23 MR. HAINES: Q. Just two more sections of
24 questions I want to ask you about, sir.

25 One, were there certain operations that you did in

1 the plant that you look back on and you were never wearing a
2 monitor or -- a personal monitor for asbestos during certain
3 operations?

4 A. Yeah. When we were inside the bins or dust
5 collectors. Usually when we were cleaning anything that
6 would create a lot of amount of dust. We usually would --
7 we never wore those. Never. Only when we were walking
8 around when they did the samples. The air samples.

9 Q. Would management determine when you wore a
10 monitor and when you didn't wear a monitor?

11 A. Yes.

12 Q. And even in the later years when you had
13 respirators with those kinds of filters on each side, when
14 you weren't wearing the respirator did you kind of hang it
15 around your neck?

16 A. All the time. If we weren't wearing it, we
17 just lay -- leave it right there hanging on our chest.

18 Q. No matter what you were doing within the
19 plant?

20 A. Doesn't make any difference. We just wore
21 them.

22 MR. HAINES: That's all I have for you. Thank you.

23 MR. DUBIN: I have some follow-up.

24 ///

25 ///

1 EXAMINATION BY MR. DUBIN

2 MR. DUBIN: Q. First let me ask you about these
3 first pictures, 1 and 2, which were you. Do you recall when
4 these were taken?

5 A. I just can't remember. It was sometime either
6 this year or early last year. I think it was this year
7 though.

8 Q. So it's not when Union Carbide ran the
9 facility?

10 A. No. We were shutting down I think then.

11 Q. Why were they taken, do you know?

12 A. To protect ourselves down the road.

13 Q. Okay. Who took them?

14 A. My shifter.

15 Q. And who --

16 A. David Aquitas.

17 Q. Did he give those pictures to you?

18 A. Yes.

19 Q. Do you know -- who did you give the pictures
20 to?

21 A. Mr. Fernandez.

22 Q. Do you know how the lawyer for Kelly-Moore got
23 the pictures?

24 A. No. I guess from Mr. Fernandez.

25 Q. And number 3 here, when was that taken?

1 A. I can't remember. That was a few years ago.
2 I just can't remember.

3 Q. During the period of time when KCAC ran the
4 facility?

5 A. Yes.

6 Q. And what is this a picture of?

7 A. That is the wet in -- I shouldn't say wet in.
8 That's -- yeah, that's RG wet in, the dryer.

9 Q. Okay. And are the individuals who are working
10 in this area wearing respirators?

11 A. Yes.

12 Q. And pictures 4, 5 -- what's been marked as 4,
13 5 and 6, when were these taken?

14 A. That was when we were operating. I just
15 can't -- this was. This was when we were down already.

16 Q. Are they all recently, within a year?

17 A. This was recently. I can't remember this.

18 Q. The one you can't remember is what's being
19 marked number 4?

20 A. Right.

21 Q. Five and six are both recent?

22 A. Yes.

23 Q. There was some testimony about selling stuff
24 to The Junk Man. Do you recall that?

25 A. Yes.

1 Q. That was KCAC selling those?

2 A. Yes.

3 Q. Was that within the last year or so?

4 A. Yes.

5 Q. Do you have any information that would lead
6 you to believe that Union Carbide was involved in that at
7 all?

8 A. As far as I know, no. Just what the company
9 says. To me I thought it was still union -- you know, Union
10 Carbide was in with KCAC.

11 Q. You understand Union Carbide and KCAC are
12 separate companies?

13 A. Yeah.

14 MR. HAINES: Object to the form of the question.

15 MR. DUBIN: Q. You talked about had -- you were
16 concerned because there was dust in the air and you -- when
17 you were required to eat lunch in certain areas. Do you
18 recall that?

19 A. Yes.

20 Q. During the period of time you worked at Union
21 Carbide did you have concerns about asbestos dust?

22 A. Yes. During that -- during that time when we
23 were -- the RG wet in, when I used to eat lunch there. And
24 even our rock fiber, when it was more of a dry process,
25 come -- the product used to come in right there instead of

1 wet, I was concerned with eating my lunch out there.

2 Q. You indicated you took steps to avoid trying
3 to take asbestos home; is that correct?

4 A. Yes.

5 Q. That was also because you had concerns about
6 asbestos dust?

7 A. Not just -- yeah, because of the buildup I had
8 on there. To me I -- I really wasn't concerned -- just
9 concerned because I -- like if I was in a dusty area, even
10 if I was outside doing my yard work I would get dust and I
11 would just dust it off. So that's the only concern I had.
12 Just that I had a large amount of, you know, dust on me. So
13 I was just dusting myself off.

14 Q. Was the reason you were concerned about eating
15 lunch near asbestos or how much asbestos you had on you was
16 because you understood that asbestos was a potential health
17 hazard?

18 A. You know, not really. I was just more
19 concerned because I could see it and they kept on saying
20 okay, there is nothing wrong with it, but I don't know, in
21 the back of my mind I was saying I don't think I want to eat
22 my lunch with particles flying all over the place.

23 Q. You are saying you were just concerned because
24 it was messy?

25 A. Yeah, just because it was messy.

1 Q. You never had any understanding that it could
2 potentially cause a lung disease?

3 A. No. Not really. It's just to me I never --
4 never really crossed my mind. I never thought of things
5 like that. I was just going on what the opinion what the
6 company kept on telling me that I was fine.

7 Q. It never crossed your mind that asbestos was a
8 potential health hazard when they required you to wear a
9 respirator?

10 A. The only reason I wore a respirator was
11 because of the amount of dust and you could see, I mean, in
12 those areas, I mean, you would be coming out looking more
13 white than this cup. And I didn't feel like going in there
14 and breathing all of that. That was just too much.

15 Q. Because it would be a potential health hazard?

16 A. To me, anything would. If you swallowed as
17 much dust as that.

18 Q. Did it cross your mind that asbestos may be a
19 potential health hazard when the company made you take a
20 chest x-ray on a routine basis?

21 MR. HAINES: Object to form.

22 THE WITNESS: To me I just figured that x-rays was
23 just to see if anything was wrong with us or anything -- if
24 we had any other problems. To me I didn't even think --
25 back in my mind, I didn't even thought of things like that.

1 I wasn't thinking about cancer or anything about it. I
2 didn't know hardly anything about that until I started
3 hearing about scarring and all of this other stuff.
4 Asbestosis. And then when I really got concerned was when I
5 heard about Paul Whitlock.

6 MR. DUBIN: Q. How about government inspectors,
7 the fact there was government officials coming in the
8 facility didn't suggest to you that asbestos could be a
9 potential health hazard?

10 MR. HAINES: Object to the form.

11 THE WITNESS: To me I was -- I didn't even think
12 much of it. I just -- to me it seemed like it was another
13 routine day. Only thing they were doing was taking samples.
14 To me it was just another day. Except that, you know, we
15 changed certain things. Then you started thinking why are
16 they telling us all this stuff. But we never -- I just said
17 well, it's the company.

18 MR. DUBIN: Q. Okay. So there was never
19 information, any information given to you that asbestos was
20 a potential health hazard while you worked at Union Carbide?

21 A. No.

22 MR. FERNANDEZ: You mean asbestos at the plant as
23 opposed to in general?

24 MR. DUBIN: At Union Carbide.

25 Q. No information that asbestos was any health

1 hazard?

2 A. No.

3 Q. Do you have any documents in your possession
4 regarding during the time you were at Union Carbide?

5 A. What do you mean?

6 Q. Any pamphlets, safety manuals.

7 A. No.

8 Q. Was it ever explained to you that other forms
9 of asbestos could be a health hazard?

10 A. The long fibers.

11 Q. What did they say that caused?

12 A. Cancer, asbestosis.

13 Q. Who told you that?

14 A. I think Daryl Garcia. When I first started
15 there.

16 Q. When did he tell you that?

17 A. When I started -- first started there in '77.
18 And then to the end too, I -- a co-worker asked me about
19 that. He said the same thing, that they -- only thing they
20 mentioned was about -- when he was hired, the same thing
21 that they just mentioned about short fibers and long fibers,
22 and we didn't work with long fiber.

23 Q. You said that you -- respirator -- the type of
24 respirator you used changed in the later years. Do you
25 recall when they changed the respirators with the filter on

1 it?

2 A. I know they changed it a few times. I can't
3 remember when they did change that.

4 Q. You talked about some areas that were very
5 dusty, inside the bins and the dust collection areas, do you
6 recall that?

7 A. Annually we'd clean the dust --

8 MR. FERNANDEZ: He hasn't asked you anything yet.

9 MR. DUBIN: Q. You recall that?

10 A. Yes.

11 Q. When someone was working in those areas were
12 they required to wear a respirator?

13 A. Yes.

14 Q. Kelly-Moore lawyer -- the lawyer here from
15 Kelly-Moore asked you a series of questions. Have you
16 discussed any of the issues that you went through with him
17 with any lawyer from Kelly-Moore?

18 A. Only thing I talked to Mr. Fernandez. But
19 it --

20 MR. FERNANDEZ: He asked you about Kelly-Moore.

21 THE WITNESS: No.

22 MR. DUBIN: Q. How about Mr. Sanov?

23 A. No.

24 Q. You were also asked some questions about when
25 they were shutting down, lawyers being present and taking

1 documents out.

2 A. Right.

3 Q. You have no information at all about what
4 documents were keep, what documents were thrown away or
5 anything like that about what went on in that process?

6 A. No.

7 MR. DUBIN: Let's go home. I'm done.

8 MR. HAINES: Two quick follow ups.

9 MR. DUBIN: I don't know if we are going to go back
10 and forth forever.

11 MR. HAINES: I am following up on what you asked
12 about.

13

14 EXAMINATION BY MR. HAINES

15 MR. HAINES: Q. Pictures 1, 2 and 3, sir.

16 MR. HAINES: You don't have to let me. The rules
17 say I can do it.

18 Q. Pictures 1, 2 and 3, all those pictures, do
19 they depict the working conditions as they existed or what
20 you looked like in your safety gear back when Union Carbide
21 ran the facility?

22 A. Yes.

23 Q. Except for the fact that your respirator was
24 different in earlier years?

25 A. Yes.

1 MR. DUBIN: Objection, form.

2 MR. HAINES: Q. Was your respirator different in
3 the earlier years?

4 A. Yes.

5 MR. HAINES: That's all I have.

6 (Whereupon, the deposition concluded at
7 11:00 a.m.)

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1 Pursuant to Section 2025(q)(1) of the Code of
2 Civil Procedure of the State of California, I hereby certify
3 that I have read my deposition, made those changes and
4 corrections I deem necessary, and approve the same as now
5 written.

6 Dated this _____ day of _____, 2003.

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11 _____
12 Under Penalty of Perjury
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1 STATE OF CALIFORNIA)
) ss.

2 COUNTY OF MONTEREY)

3

4 The witness in the foregoing deposition appeared
5 before me, JENNA OSBORN, Certified Shorthand Reporter No.
6 8681 for the State of California.

7 Said witness then and there at the time and place
8 previously stated testified under penalty of perjury given
9 on said day.

10 The testimony of the witness and all the questions
11 and remarks requested by counsel were taken by me in
12 shorthand at the time and place therein named and
13 thereafter, under my direction, transcribed into
14 longhand.

15 I further certify that I am not of counsel or
16 attorney for either or any of the parties to said
17 deposition, nor in any way interested in the outcome of the
18 cause named in said caption and that I am not related to
19 any party thereto.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 this day of , 2003.

22

23

24 CERTIFIED SHORTHAND REPORTER

25 FOR THE STATE OF CALIFORNIA