

FILE NAME: WR Grace (WRG)

DATE: January 22, 1986

DOC#: WRG321

DOCUMENT DESCRIPTION: 1986 Legal - Deposition of William E. Smith, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

THE CORPORATION OF MERCER
UNIVERSITY,

Plaintiff

v.

NATIONAL GYPSUM COMPANY, et al.,

Defendants

CIVIL ACTION NO.
85-126-3-MAC

STATE OF MARYLAND,

Plaintiff

v.

KEENE CORPORATION, et al.,

Defendants

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
CIVIL ACTION NO. 1108600

VOLUME TWO

DEPOSITION OF: WILLIAM E. SMITH, M. D.

Upon oral examination, taken by counsel for Plaintiffs
on January 22, 1986, commencing at 10:00 a.m., at Holiday
Inn, Ellsworth, Maine, before Corinne L. Keene, RPR, Notary
Public, State of Maine.

BROWN, KEENE & HALTEMAN

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1 APPEARANCES

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11 For Defendant Grace:

RICHARD MONAGHAN, ESQ.
Herrick & Smith
100 Federal Street
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1 that and it says groups 1, 2, and 3. Can you describe
2 for us what this is, please, sir?

3 A Yes. This is a notebook labelled VG, dash, Vanderbilt,
4 groups 1, 2, and 3. The significance of VG was that we
5 used that on our notebooks to indicate Vanderbilt-
6 Grace because we were running tests of samples of
7 tremolitic ore provided to us by R. T. Vanderbilt
8 Company and it was at about that time that Dr. Yang
9 asked us if we could run some tests of tremolite
10 preparations for Grace, and I said, well, we're
11 going to have a control group of animals that are
12 sham operated and treated with just injection of
13 saline into the pleural space and those animals
14 in that control group could just as easily serve as
15 controls for the samples from W. R. Grace as for the
16 sample from R. T. Vanderbilt. So for that reason we
17 just have a designation on this book VG because the
18 groups 1 and 2 are groups of animals treated with
19 different doses of the material we received from
20 Vanderbilt. Group 3 are the control animals. And
21 this book contains a -- each individual animal is
22 entered with a number on a single line and then at
23 intervals in the course of the experiment the weight,
24 the body weight of that animal is entered and then
25 at the time that that animal died the number of days,

1 the day on which the animal died is entered and the
2 number of days from the start of the experiment.

3 Q Can you identify Exhibit 77 which would appear to me
4 to be the ledger pertaining to the Grace study,
5 groups 4 and 5, is that correct?

6 A Yes, it is a similar notebook and in it are entered
7 the animals from group 4 and group 5. Group 4 was
8 treated with sample 60 and group 5 with sample 63.
9 And these books are -- this book is set up in the
10 same way as the other one. It shows the animal number
11 and then the weight, body weight of the animal at
12 intervals as the experiment proceeded, the day on
13 which that individual animal died, and then the number
14 of days that represented from start of test.

15 Q Doctor, was sample 60 in the Grace study pure tremolite
16 or the mixture of 50 percent tremolite?

17 A I think sample 60 was the pure tremolite. Let me
18 just be sure on that. Sample 63 was tremolite-
19 vermiculite.

20 Q Doctor, can you tell me what adenocarcinoma is,
21 your definition of it?

22 A Well, it's a cancer that has cells that resemble cells
23 of, let's say, a lining of a lung or lining of the
24 gastrointestinal tract, gland-like cells in contrast
25 to so-called squamous carcinomas which are made up of

1 happens a lot?

2 A Well, it's an uncommon tumor in, as spontaneous tumor
3 in hamsters.

4 Q Is it thought to be associated with a fibrogenic
5 process?

6 A Not that I know of.

7 (Manila folder, entitled Vanderbilt-W. R.
8 Grace, Project Data Sheets, was marked for
9 identification as Deposition Exhibit 82.)

10 BY MR. DIES:

11 Q Okay. Can you identify for me what's been marked as
12 Exhibit 82 and it says on the front: Vanderbilt-W. R.
13 Grace Project Data Sheets, and I have taken those out
14 for the moment here, but can you tell us what this
15 material is?

16 A Well, these are pages from a loose-leaf binder on
17 which we have entered the individual animals, how
18 long they lived and what was found in the growth,
19 what was found on the histopathology. In contrast
20 to the, the bound books that you have as exhibit --
21 well, I don't know the number, Exhibit 76 and 77, those
22 books were set up when the experiment was started and
23 the animals in each group are listed simply one, two,
24 three, four, five.

25 Now, as the experiment progressed, it could be

1 that animal 48 was the first to die perhaps at 57 days.
2 Then animal 15 might die at 102 days and so forth, and
3 that's all recorded in those books.

4 Now, to unscramble that and put the animals
5 listed chronologically in the order in which they
6 died, that was done on the pages that you have here.

7 (There was discussion off the record.

8 (Data sheet entitled Group 4, V-G, Tremolite
9 60, page 5, 25 mg, containing listing of animal
10 52, handwritten, was marked for identification as
11 Deposition Exhibit 213-B.

12 (Data sheet entitled V-G, Group 3, Continued,
13 Control Saline, handwritten, was marked for
14 identification as Deposition Exhibit 213.

15 (A brief recess was taken.)

16 BY MR. DIES:

17 Q On the record, Doctor, we have marked in the data
18 sheets for the Grace study as Exhibit 213-B that sheet
19 that pertains to animal 52 in group 4, and I would
20 like for you to read into the record and explain to
21 us the writing that is identified on that sheet with
22 animal 52. Tell us what it says, please.

23 A It says in the gross findings 3 foc, which means focal
24 adhesions were recorded as grade 3, and then 2 dif,
25 which means that there were diffuse adhesions regarded

1 MR. MONAGHAN: Can I state for the record that
2 document was produced as part of the -- the original
3 was produced yesterday.

4 MS. ROCK: That's what we're asking him to say.

5 MR. MONAGHAN: Okay.

6 A The original is here in the, with the computer cards
7 and shows what the color codes represented in the
8 sketches that were made on the autopsy cards. It
9 also shows the definitions that we adopted for grading
10 the different kinds of adhesions that we saw. They
11 are all here. For example, just a one plus meant that
12 there were little, thin adhesions that we speak of
13 here as violin string adhesions, whereas in this
14 animal number 52, the focal adhesions are listed as
15 grade 3, which would mean more than eight and less than
16 12 of those violin type adhesions.

17 Then for diffuse adhesions, we graded it grade 2
18 and for diffuse adhesions grade 2 would mean 2 to 2 plus
19 lobes bound together or to chest wall or more adhesions
20 equal to this area.

21 BY MR. DIES:

22 Q Okay. What else is indicated on your data sheet?

23 A On this sheet in Exhibit 213-B, opposite animal 52
24 and under histopathology, it says mucus adenocarcinoma,
25 left lung, and then H. Sobel and then WES, so that

1 would mean that both Dr. Sobel and I saw that.

2 Now, there is a statement under that: Asbestos
3 bodies.

4 Q What are asbestos bodies?

5 A Asbestos bodies are deposits of iron that form on
6 asbestos fibers, and as I look back, as I recall --

7 Q Let me get -- let me just stay with that while I've
8 got it at the tip of my tongue. Can we assume that
9 Dr. Sobel made the diagnosis to which you agreed that
10 there were present in the tissue asbestos bodies and
11 that's the reason it's written there?

12 A Well, it seemed to me that, as I look at this note,
13 asbestos bodies not in lung, this is something that
14 he's written on the back of the card so where were
15 the asbestos? They must have been seen somewhere.

16 MR. MONAGHAN: The card --

17 A (Continuing) Oh, yes, here we go. On the front of
18 the card, this goes back to Exhibit 211-B for animal
19 52. On the front of the card among the various printed
20 things, there's a column where we would check for either
21 the presence or absence of what on the printed card
22 says Fer, period, bodies. That was our abbreviation
23 for ferruginous bodies or iron-containing bodies, and
24 on this card number two is circled and it says:
25 HS and WES agree. So, there were -- we agreed that

1 fibrogenic process or fibrosis? Is there any similarity
2 between the, whatever the definition you may use and
3 fibrous processes and diffuse adhesions?

4 A Well, it would be a way of estimating in the gross;
5 that is, with the naked eye, whether there had or had
6 not been fibrosis.

7 Q So the diagnosis as indicated in the card for animal 52
8 marked as Exhibit 211-B does indicate that there was a
9 fibrosis indicated by the blue throughout the lung in
10 these areas that have been colored?

11 A That's correct. We checked that out by the special
12 stain for fibrosis that is one of the exhibits. It's
13 a paper that you have -- I don't recall the number of
14 the exhibit -- but the type of stain that we used to
15 actually find out whether there were fiberglass there,
16 and fibrosis is recorded.

17 Q And fibrosis is one of the conditions that can be
18 associated with exposure to asbestos?

19 A That's correct.

20 Q Okay. All right. Let's see. I'm not sure that I'm
21 clear yet on where you concluded that asbestos bodies
22 were found in the sample.

23 A The asbestos bodies were certainly seen in the initial
24 sections and presumably in the pleura because when
25 Dr. Sobel examined the sections later he made a specific

1 comment that he hadn't seen them in the lungs whereas
2 he and I both agreed they were present and they must
3 have been present in the adhesions in the pleura.

4 Q And that's the reason on the computer card for the
5 animal that you have ferruginous bodies circled,
6 level two?

7 A Two.

8 Q And that's what you meant by that?

9 A That's right.

10 Q And because of the fibrosis indicated in examination
11 of the animal's lung which we agreed was indicated in
12 blue coloring, that's why you and Dr. Sobel circled
13 level three, I'm sorry, level two under fibrosis?

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q I want to look at the computer card marked as
18 Exhibit 211-A on animal 79 in group 3, the control
19 group, and I would like for you to describe for me
20 in essence your findings in connection with that
21 animal and interpret that for me, and we have talked
22 about, talked about this to some extent. Can you
23 tell us if there are any ferruginous or asbestos
24 bodies identified in the lungs of that animal, as
25 indicated by the computer card?

1 with Exhibit 96 and ending with Exhibit 206 were
2 originally contained when you brought them to the
3 deposition, is that not correct?

4 A That's correct.

5 (Envelope was marked for identification as
6 Deposition Exhibit 210.)

7 BY MR. DIES:

8 Q And Exhibit 211 is the metal file container containing
9 the various card files on the examination and
10 pathologic examination of the particular animals in
11 various studies, is that correct?

12 A Yes, sir.

13 (Metal file cabinet containing computer
14 cards was marked for identification as
15 Deposition Exhibit 211.)

16 BY MR. DIES:

17 Q Doctor, marked as Exhibit 217 is a letter which you
18 brought to the deposition this morning, according to
19 Mr. Monaghan's statement earlier today, dated
20 December the 3rd, 1953, to you from a Mr. John F.
21 Knox, marked Confidential, appears to be not a copy
22 but, well, maybe it is a copy. It's an original
23 typed copy apparently to you from Mr. Knox. Can
24 you identify for us this letter and have I characterized
25 it properly in terms of its date and its author?

1 A The date and the author, yes. This is a typed copy of
2 a letter that I received in December. It was mailed
3 December 3, 1953 from Dr. Knox to me. His original
4 letter was in longhand. This is a typed copy of the
5 longhand letter.

6 Q Is that an accurate copy of the original letter that
7 was in longhand, Doctor?

8 A Yes.

9 Q Has it been maintained in your custody as part of your
10 personal records since you received it back in, I assume,
11 December of 1953?

12 A Yes.

13 Q You brought it here today, is that correct?

14 A That's correct.

15 Q Who was Mr. Knox, for the record?

16 A Well, John Knox is a physician who was the medical
17 officer for one of the principal asbestos mills in
18 England.

19 Q Okay. Thank you. Doctor, Exhibit 218 appears to be
20 a copy of a letter that was dated February 18th of
21 1954 addressed to John F. Knox, M. D., in England
22 signed by William E. Smith, M. D. The question is,
23 can you identify this as a true copy of a letter that
24 you wrote to Dr. Knox on February 18, 1954?

25 A Yes, this is a carbon copy of my letter to Dr. Knox.

1 Q All right. And likewise that's been maintained in
2 your records since you transmitted the letter?

3 A Yes.

4 Q You brought it here today, is that correct?

5 A That's correct.

6 Q Exhibit 219 has been marked and it consists first of a
7 two-page handwritten letter addressed to you,
8 Dear William Smith, from John F. Knox, dated
9 2/16/1954. Attached to the handwritten letter is a
10 typed document consisting of five pages numbered at
11 the bottom, first page having the title, quote,
12 Mortality from Lung Cancer Among Asbestos Workers,
13 close quote. The left-hand side at the top, the
14 name J. F. Knox, Industrial Medical Officer, appears.
15 On the right-hand side of the top of the page, the
16 name R. Doll, D-o-l-l, member of the Statistical Research
17 Unit of the Medical Research Council, appears.

18 The next page following page five of that
19 document is a page listing references. It's not
20 numbered by page. Attached to that, the next page,
21 is a table one, quote, Causes of Death, Diagnosed at
22 Autopsy Among Persons Employed at an Asbestos Works,
23 1933-1952.

24 Attached to that is a table identified and
25 described as table two, Asbestos Workers With Primary

1 Lung Cancer, Occupational History and Autopsy Data.
2 The next page is table three, quote, Number of Man-
3 Years Lived by Men Who Had Previously Worked for 20
4 or More Years in a Scheduled Area.

5 The final page is table four, Causes of Death
6 Among Male Asbestos Workers Compared With the Mortality
7 Experience of All Men in England and Wales. Can you
8 identify Exhibit 219 as being the original handwritten
9 letter sent to you by Dr. Knox on December 6, 1954 and
10 the attachments being the attachments I have described
11 which he sent to you as part of this letter?

12 A Yes, that's correct.

13 Q Doctor, I think I may have left out attached to that
14 is a Xerox copy. I will ask you if it should be
15 attached of, quote, Mortality From Lung Cancer in
16 Asbestos Workers by Richard Doll. Is this something
17 that should be attached to that or --

18 A That came later, and the data that is in this
19 typewritten document that you just cited titled
20 Mortality From Lung Cancer in Asbestos Workers by
21 J. F. Knox and R. Doll, D-o-l-l, was their original
22 or their preliminary report. Later that material was
23 published in the document that you have there, and
24 the publication is made entirely by Dr. Doll, D-o-l-l.

25 Q All right. Let's stop and mark this document

1 separately as it was not marked.

2 (Reprint entitled Mortality From Lung Cancer
3 in Asbestos Workers, six sheets, was marked for
4 identification as Deposition Exhibit 221.)

5 BY MR. DIES:

6 Q Now, let's talk for a moment a little bit more about
7 Exhibit 219, the attachment to the handwritten letter
8 which is dated 2/6/54 to you from Dr. Knox and make
9 sure I understand the documents beginning with page
10 1 described as Mortality From Lung Cancer Among
11 Asbestos Workers consists of the data from what?

12 A It's data that Dr. Knox got out of his records that
13 became available to him of cases of co-existing
14 asbestosis and lung cancer in people that had been
15 employed in the plant where he was the medical officer.

16 Q Okay. Now, let's go to Exhibit 221 we talked about
17 and just marked which, again, is described as Mortality
18 From Lung Cancer in Asbestos Workers by Richard Doll
19 and in light of that explanation tell us what Exhibit
20 221 is.

21 A Two twenty-one is a Xerox copy of a publication in
22 the British Journal of Industrial Medicine, the year
23 1955, Volume 12, pages 81 through 86.

24 Q And is that the published form of the data attached
25 to the 2/6/54 letter, Exhibit 219?

1 A Yes.

2 Q All right. Can you identify what's been marked as
3 Exhibit 220 which bears the date June 12, 1956, a
4 letter addressed to George E. Armstrong, M. D.,
5 Director of New York University, Bellevue Medical
6 Center, consisting of a number of pages and signed by
7 you. Can you identify that for us, please?

8 A Yes. This is a seven page letter that I sent to
9 Dr. Armstrong attempting to detail my experience at,
10 during my service at New York University and bringing
11 out that my, I had been told by my chief, Dr. Lanza,
12 that my appointment there would not be continued.

13 Q Excuse me, Doctor. I just want to clarify at this
14 time, is it a correct statement that that is a letter
15 written in your hand and authored by you on that date
16 and actually that was sent to the gentleman I
17 indicated, Mr. George E. Armstrong?

18 A Yes, and the purpose of the letter was to request
19 a hearing.

20 Q Okay. In connection with your circumstances involving
21 your departure from New York University which you
22 described earlier in the deposition, is that correct?

23 A That's correct.

24 Q All right. Dr. Smith, a couple of questions in
25 connection with documents. Who is Professor R. E. Lane?

1 A R. E. Lane?

2 Q Yes, sir. You recall Professor R. E. Lane?

3 A I don't recall that name.

4 Q Let's see. What about the Daymon Runyan fund? What
5 is that?

6 A Daymon Runyan fund is a fund that makes grants largely
7 in support of cancer research work.

8 Q Do you know anything about the origin of it, when
9 was it, when did it begin, how was it organized,
10 approximately what dates?

11 A I would just be guessing.

12 Q Well --

13 A It goes back to, I think, oh, shortly after the second
14 World War.

15 Q Okay. Have you ever received any grants from that
16 organization?

17 A I don't recall any.

18 Q Okay.

19 A I say that because at Sloane-Kettering Institute and
20 also at NYU there was some general grants and I may
21 have benefitted in some way from grants made to the
22 institution.

23 Q Okay. Do you have any specific knowledge of any
24 grants or funds that were given by that fund or group
25 to any study in connection with asbestos, asbestos

1 workers, asbestosis or asbestos in cancer?

2 A I don't recall. I remember that when I was at NYU
3 there was talk of going to them for a grant, but I
4 don't really remember back to whether any proposal
5 was made to Daymon Runyan.

6 Q Doctor, are there any other documents in your
7 possession or that have been in your possession in
8 connection with the items listed on the subpoena
9 that we went over yesterday or in connection with the
10 various research experiments, studies, and matters
11 that we have talked about in this deposition in
12 reference to the records we have that you showed to
13 Mr. Monaghan or discussed with him and for whatever
14 reason have not brought to the deposition or produced?

15 A No.

16 (A brief recess was taken.)

17 BY MR. DIES:

18 Q Doctor, in connection with your letter to Dr. Armstrong
19 in 1956 on June 12th, 1956 which is marked as Exhibit
20 220, did you ever get the hearing before the University
21 authorities that you requested?

22 A No, I did not. I had a call from Dr. Lanza telling
23 me that asbestos, my interest in asbestos problems
24 and his association with asbestos companies was only
25 part of the larger picture and that I just didn't

1 understand the enormous trouble was caused by claims
2 for occupational cancers and that if I persisted in
3 going through with request for hearing, he would see
4 to it that I never got a position in any other
5 university and also that he would enter a suit for
6 libel against me. Now --

7 Q Okay, Doctor. Is there something that's material
8 in terms of whether you got a hearing or not?

9 A Well --

10 Q I don't want to cut you off but I don't --

11 A What happened was that I felt very deeply about the
12 public health aspects of this, but after talking with
13 my wife about it, she pointed out to me that this
14 might mean that our family would end up out on the
15 street, and about the same time an old friend whose
16 judgment I very much respected told me that I was just
17 struggling against the world and I better give up,
18 that I was a laboratory man, I ought to stick to that.
19 Also, he had a friend in New Jersey who was president
20 of a college and he wanted to talk to me about my
21 experience, and this was Dr. Peter Sabertino who was
22 president of Fairleigh Dickinson University. So my
23 friend spoke with Dr. Sabertino and I was offered a
24 position at Farleigh Dickinson University where I have
25 worked happily ever since until just a couple of years

1 ago they told me I was getting old and over the hill
2 and time for me to move along to green pastures. So
3 I have come up here to Maine and hopefully will get a
4 few more papers written up on things that we should
5 have described long ago.

6 MR. MONAGHAN: I'm going to move to strike that
7 answer as nonresponsive.

8 BY MR. DIES:

9 Q I hope so, Doctor. Doctor, let me ask you to look
10 at page 4, last paragraph of this letter to
11 Dr. Armstrong, Exhibit 220, and I want to read a
12 sentence to you and ask you to follow while I read,
13 and make sure I read it correctly, beginning the third
14 line here with I recall. Do you see that?

15 A I do.

16 Q I recall that, according to my understanding,
17 Professor Lanza served since about 1949 as consultant
18 for a large asbestos company, which I shall define
19 for the present purpose as Company X. In the spring
20 of 1950, medical officers of this and other asbestos
21 companies visited the Institute to discuss a report
22 published by the Chief Inspector of Factories in
23 Great Britain indicating association of lung cancer
24 with asbestosis.

25 Did I read that correctly?

1 because I think I'm done?

2 (A brief recess was taken.)

3 MR. MONAGHAN: I don't have anything further.

4 I obviously reserve my right to ask questions if the
5 Plaintiff conducts further examination. That is all
6 I have for now.

7 REEXAMINATION

8 BY MR. DIES:

9 Q Doctor, do you recall the testimony that you gave
10 Mr. Monaghan, as I remember substantially this would
11 be correct, that the evidence that you have received
12 and reviewed from the British in connection with the
13 link between asbestos and cancer was at the least
14 sufficient to make you highly suspect and to believe
15 that further testing was required?

16 MR. MONAGHAN: I'm going to object to that
17 question both as to the statement on the record and
18 as to leading. You may answer.

19 THE WITNESS: I may answer?

20 MR. DIES: Yes, you may answer.

21 MR. MONAGHAN: We all agree on that you can answer.

22 A My answer is yes.

23 BY MR. DIES:

24 Q Do you know, Dr. Smith, whether the W. R. Grace and
25 Company or any other asbestos company --

1 MR. MONAGHAN: I want to object to the
2 characterization of W. R. Grace as asbestos company.

3 MR. DIES: Let me start over again.

4 BY MR. DIES:

5 Q Doctor, do you know whether W. R. Grace and Company or
6 any other company that sold asbestos products ever did
7 any further testing themselves on the question of
8 whether their asbestos products were producing cancer
9 in those years?

10 MR. MONAGHAN: I want to object as to what years
11 we're referring to.

12 BY MR. DIES:

13 Q In the years following, immediately following the
14 British study that you referred to.

15 MR. MONAGHAN: I will state another objection,
16 to the best of my knowledge, W. R. Grace was not
17 selling asbestos-containing products until 1963.

18 BY MR. DIES:

19 Q Well, Doctor, I will just make it a broad question
20 and come back to that one. Let's try it this way.
21 Do you know whether W. R. Grace and Company ever did
22 any testing whatsoever to determine whether their
23 products that contained asbestos were a cause of cancer
24 in humans other than the tests and experiments that
25 you performed?

1 A I'm not familiar with any other studies.

2 Q And how long a period of time, Dr. Smith, were you
3 associated in the study that we have talked about now
4 for a day with W. R. Grace and various employees
5 including at least two doctors consulting with W. R.
6 Grace and familiar with the company?

7 A Well, the dates are on the correspondence. I believe
8 it was a period of about two years.

9 Q Certainly if W. R. Grace had conducted other tests
10 to determine whether any of its asbestos-containing
11 products were dangerous as a cause of cancer, you
12 would have expected them to give you that information,
13 would you not?

14 MR. MONAGHAN: I'm going to object to that
15 question as leading and suggesting the answer to the
16 witness.

17 BY MR. DIES:

18 Q You can answer it.

19 A I can answer it? I would have assumed so.

20 Q Would you also not, would it not be the case that if
21 in fact there were significant data on the history of
22 W. R. Grace's employees at their Libby mine that
23 indicated significant disease process related to
24 cancer that if that information existed, you certainly
25 would assume that W. R. Grace would have provided you

1 that information?

2 MR. MONAGHAN: I'm going to object to that question
3 both because it's leading and suggesting the answer and
4 because you're asking, as you have noted, Dr. Smith to
5 assume what W. R. Grace and Company may or may not have
6 done and in fact to read the minds of other individuals.
7 You can answer it.

8 BY MR. DIES:

9 Q You can answer the question, Doctor.

10 A Well, I don't really see any need for them to have
11 acquainted me with any other studies. They had a
12 question they wanted to ask. They formulated the
13 question: How could we run some tests on some
14 materials that they could provide? And I told them
15 how we could do the tests. We agreed to do them and
16 we did them.

17 Q Do you know or were you ever provided even facts in
18 connection with the mortality rate for W. R. Grace's
19 employees at the Libby mine?

20 A No.

21 Q When you made the various statements to Mr. Monaghan
22 that, and I believe you were reading from some letter
23 that he pulled out of the correspondence file, that
24 the animal study that you performed which indeed
25 showed their product was carcinogenic in hamsters --

1 BY MR. DIES:

2 Q You can answer the question.

3 A Well, I do not recall being given any information
4 about clinical studies of the men in the mine or the
5 mills. I do recall that Dr. Duecker asked me in the
6 course of the studies that we did at the time when we
7 began to find tumors in some of the animals, if I
8 could recommend any additional types of studies, and
9 I did say that we could do some further studies by
10 intrapleural tests which we were set up to do but that
11 we were not set up to do inhalation exposures, and I
12 suggested to him two things. One was that the next
13 step would be either inhalation exposures in
14 experimental animals but that it really might be
15 more pertinent to go to the species that we were
16 all concerned with, human beings, and look at
17 epidemiological data and see first if there were
18 really any reasons to do animal studies. If
19 epidemiological study showed that there were or was
20 a cancer problem, then there would be no real reason
21 to do laboratory animal studies.

22 MR. MONAGHAN: I'm going to move to strike that
23 answer as not responsive.

24 BY MR. DIES:

25 Q And as you have stated yourself in the record, you

1 yourself were never given any information by Grace as
2 to any epidemiological data or clinical data involving
3 their own employees and their exposure to the product
4 tremolite?

5 MR. MONAGHAN: I'm going to object to the question
6 as leading. You can answer.

7 BY MR. DIES:

8 Q Is that correct?

9 A That's correct.

10 Q I guess what I'm asking you, Doctor, is this. In
11 terms of the type of evidence then that might be
12 weighted that you would want since you have got your
13 study and you have qualified that in your answer to
14 Mr. Monaghan that it was a screening program and it's
15 difficult to extrapolate from the animal studies,
16 would you in fact consider it the best evidence to
17 in fact study those employees who had been exposed to
18 the product in their plant?

19 MR. MONAGHAN: I object to the question as
20 leading and because it is compound and I believe that
21 it misstates the record.

22 BY MR. DIES:

23 Q You can answer the question, Doctor.

24 A I would say yes.

25 Q Doctor, I wasn't in the room but you offered testimony

1 marked Exhibit 138.

2 (There was discussion off the record.)

3 A (Continuing) The only lung, the only tumor of the lungs
4 was metastatic malignant melanoma.

5 BY MR. DIES:

6 Q And which animal was that on?

7 A That was in animal 79.

8 Q That was the animal --

9 A Group 3.

10 Q Was that not the animal that we talked about at length
11 earlier in the deposition when we looked at the actual
12 computer cards and did not find any evidence of
13 fibrosis or mineral particles?

14 MR. MONAGHAN: I want to object to that question
15 as leading and that the record speaks for itself.

16 BY MR. DIES:

17 Q You can answer the question, Doctor.

18 A Yes, the answer is yes.

19 (A brief recess was taken.)

20 BY MR. DIES:

21 Q Dr. Smith, in terms of what was reported about asbestos
22 and the relationship to cancer, sort of summarizing some
23 of the things that we have talked about, it's true from
24 what we established, is it not, that at least in the
25 medical journals by, in one instance, 1944, the

1 editorial in the American Journal of Medicine, there
2 were suggestions by leading investigators that asbestos
3 was in fact a cause of cancer; I believe you agreed
4 with that, did you not?

5 MR. MONAGHAN: I'm going to object to that
6 question as leading and to the extent that it's an
7 attempt to state the record, the record speaks for
8 itself and I believe Dr. Smith has already testified
9 at some length about the subject of that question.
10 You can answer.

11 A Yes.

12 MR. MONAGHAN: What was the answer? I didn't
13 hear the answer.

14 THE WITNESS: Yes.

15 BY MR. DIES:

16 Q Also, isn't it a fact that medical literature, to
17 your knowledge, based upon your career, that in
18 terms of what you yourself were exposed to and what
19 you knew, that by the year 1950 when you completed
20 your tour in Europe and published your review of
21 occupational tumors, you chose certain categories
22 of occupational tumor incidence to write about and
23 in fact asbestos was one of those categories?

24 MR. MONAGHAN: I'm going to object to that
25 question as leading, as being compound.

1 A Yes.

2 BY MR. DIES:

3 Q And I believe that we established yesterday that
4 your article was in fact published in a reputable
5 medical journal entitled The Survey of Current British
6 and European Studies of Occupational Tumor Problems,
7 and you felt that the evidence of what you had
8 gathered was at least significant enough to report
9 to the medical community in the United States and
10 describe the incidence of tumors in these particular
11 categories in which you include asbestos?

12 MR. MONAGHAN: I'm going to object to the
13 question as leading and because it attempts to state
14 or restate Dr. Smith's previous testimony which speaks
15 for itself.

16 MR. DIES: You can answer.

17 A Yes.

18 BY MR. DIES:

19 Q And isn't it also true that in terms of your own
20 career, as we have established in this deposition,
21 that by the year 1953 you had received evidence and
22 communication from Dr. Knox detailing the findings
23 that were going to be published later with regard to
24 the incidence of lung cancer associated with asbestos?

25 MR. MONAGHAN: I'm going to object to the question

1 as leading and to the extent that it characterizes
2 findings which are on the record. I object on that
3 basis as well.

4 A Yes.

5 BY MR. DIES:

6 Q And if one goes back and looks at it from a factual
7 standpoint, what that evidence said, regardless of
8 what characterization one might put on it, from a
9 factual standpoint the literature showed in late
10 1930 -- I don't remember the exact date that Dr. Gloyne
11 in England had in fact reported a case study connecting
12 asbestos with cancer. That's true, isn't it?

13 MR. MONAGHAN: Object to the question as leading.

14 A I don't, I don't recall offhand when that report came
15 out.

16 BY MR. DIES:

17 Q Let me just stick then to your personal knowledge
18 based upon the information and data that you came in
19 contact with in your career. Factually, isn't it
20 true that the report of the Chief Inspector of
21 Factories from England that you reviewed in your
22 literature 1950 that he found and you reported that
23 there was a tenfold increase in cancer among asbestos
24 workers studied, tenfold over what he thought to be
25 the normal rate of cancer?

1 MR. MONAGHAN: I'm going to object to the question
2 as leading and because it purports to state both the
3 results of two studies, both of which are in the record
4 and both of which speak for themselves. You can answer.

5 A I don't recall whether the Chief Inspector had that
6 number, tenfold increase in his report, not that
7 stands out in my recollection and the report from
8 Dr. Knox.

9 MR. DIES: Okay.

10 MR. MONAGHAN: I move to strike the answer as
11 nonresponsive.

12 BY MR. DIES:

13 Q All right. Therefore, Dr. Knox in 1953 reported to
14 you evidence of a tenfold increase in cancer from
15 exposure to asbestos?

16 MR. MONAGHAN: Object to the question as leading.

17 A Yes.

18 BY MR. DIES:

19 Q And in terms of your work for W. R. Grace, it's true,
20 isn't it, Doctor, that when you go through the
21 correspondence and the files that we have here, that
22 you notified W. R. Grace at least by the year 1977
23 that, based on your experiments, your finding was
24 that their product containing tremolite as submitted
25 to you, a sample, was carcinogenic?

1 MR. MONAGHAN: I'm going to object to the question
2 as leading, as compound, as a misstatement of the
3 record. There's no testimony here today that any
4 Grace product was ever submitted to Dr. Smith.

5 BY MR. DIES:

6 Q Let me restate that, Doctor, The facts are that,
7 based on your experiment, at least by 1977 you reported
8 to W. R. Grace through the established channels that
9 you had in the working relationship that the tremolite
10 samples that they had sent to you produced carcinogenic
11 activity in the hamsters, the animals that you studied.

12 MR. MONAGHAN: I'm going to --

13 MR. DIES: Can I finish my question?

14 MR. MONAGHAN: I thought you were done. I'm
15 not trying to slow things down.

16 MR. DIES: You can answer the question.

17 MR. MONAGHAN: I'd like to object to the question
18 as leading and the record speaks for itself. What
19 Dr. Smith communicated to W. R. Grace has been testified
20 to at some length and more importantly as is reflected
21 in the documents, unless you are asking about
22 additional communications.

23 BY MR. DIES:

24 Q You can answer the question, Doctor.

25 A The answer is yes.

1 Q Isn't it also true factually that you told W. R. Grace
2 through established channels as part of your working
3 relationship that the next thing they could do is to
4 perform more testing?

5 MR. MONAGHAN: I'm going to object to the question
6 as leading.

7 BY MR. DIES:

8 Q You can answer, Doctor.

9 A I outlined some additional tests that could be done
10 and, as I mentioned a little earlier, I suggested
11 that perhaps additional animal experience were
12 considered, they might want to get some epidemiological
13 studies.

14 Q In fact, you not only suggested that but you mentioned
15 the possibility of inhalation study regarding animals,
16 did you not?

17 MR. MONAGHAN: Object to the question as leading.

18 A Inhalation exposure, yes.

19 BY MR. DIES:

20 Q And it's also true that W. R. Grace, Doctor, never
21 asked you to perform anymore tests or experiments
22 subsequent to that, did they?

23 MR. MONAGHAN: I'm going to object to the
24 question as leading.

25 A Well, as I mentioned earlier, we were not set up to do

1 inhalation exposures and actually the data that we
2 had gotten from the intrapleural tests was providing
3 a positive answer so that there really didn't seem
4 much point in going into further intrapleural studies.
5 Similarly, we are not, we were not set up to do
6 epidemiological study.

7 BY MR. DIES:

8 Q Okay. Would it be true though, Doctor, that subsequent
9 to your communication to Grace of the facts that we
10 have just discussed, that no one with W. R. Grace
11 ever requested your involvement or, to your knowledge,
12 your data at least through you and any other studies
13 or tests that they chose to follow up on?

14 MR. MONAGHAN: Object to the question as leading
15 and as compound.

16 A No, I have had no further contact or discussion since
17 the material that I brought to you. Of course, I don't
18 know whether they may have gone to others who would
19 be equipped to do epidemiological studies or the
20 inhalation exposures of animals.

21 Q That's what you would have expected though, is it not,
22 Doctor, from the fact that you told them you were not
23 equipped to do inhalation studies and you couldn't do
24 the epidemiological study?

25 MR. MONAGHAN: I'm going to object to the question

1 as leading and asking what, I think, what Dr. Smith
2 expects W. R. Grace to do.

3 MR. DIES: You can answer the question.

4 A Yes.

5 MR. DIES: That's all we have.

6 MR. MONAGHAN: I just have one question if it's
7 all right.

8 REEXAMINATION

9 BY MR. MONAGHAN:

10 Q Dr. Smith, you have just answered a series of
11 questions for Mr. Dies. An hour or so ago you
12 answered a number of questions that I asked you.
13 If I was to ask you those questions again, would
14 your answers be any different now than they were an
15 hour or so ago when I asked you questions?

16 MR. DIES: Excuse me, Doctor. I'm obligated to
17 respond to that. That question is improper form in
18 just about every jurisdiction in the country. It
19 assumes that -- it's global. The question asked the
20 doctor to assume an answer to a question, every
21 question you asked him, most of which I wasn't in
22 here for. I'm sure he can't remember every question.
23 I object to the form of the question. It's improper.

24 BY MR. MONAGHAN:

25 Q Dr. Smith, you can answer the question. If you'd like