

0001

1 CAUSE NO. 02-09281
2 MARTY MITCHELL,) IN THE DISTRICT COURT
PLAINTIFF,)
3)
VS.) 134TH JUDICIAL DISTRICT
4)
AMETEK, INC., et al.,)
5 DEFENDANTS.) DALLAS COUNTY, TEXAS

6 *****
7 ORAL DEPOSITION OF
8 DR. DAVID EGILMAN
9 MAY 21, 2003
10 *****

11
12
13
14
15 ORAL DEPOSITION OF DR. DAVID EGILMAN, produced as a
16 witness at the instance of the Defendant, Beazer East,
17 Inc. and Elliott Turbomachinery Co., Inc. and duly
18 sworn, was taken in the above-styled and numbered cause
19 on the 21st day of May, 2003, from 10:04 a.m. to 5:15
20 p.m., before Jennifer Hoodenpyle, CSR, RPR, in and for
21 the State of Texas, reported by machine shorthand, at
22 the Hyatt Regency DFW, International Parkway, Dallas,
23 Texas, pursuant to the Texas Rules of Civil Procedure
24 and the provisions stated on the record or attached
25 hereto.

0002

1 A P P E A R A N C E S
2 FOR THE PLAINTIFF:
3 MR. MARK TAYLOR
KAESKE LAW FIRM
4 6301 Gaston Avenue, Suite 735
Dallas, Texas 75214
5 214-821-1221
214-821-0977 fax
6
FOR THE DEFENDANTS, BEAZER EAST, INC. AND ELLIOTT
7 TURBOMACHINERY CO., INC.:
8 MS. AMY E. NETTLE

CROUCH & INABNETT

9 2300 Fountain Place
1445 Ross Avenue
10 Dallas, Texas 75202
214-922-7100

11 214-922-7101 fax

12 FOR THE DEFENDANT, AMERICAN STANDARD, INC.:

13 MR. STEPHEN K. GUIDRY
GERMER, BERNSEN & GERTZ, L.L.P.

14 550 Fannin Street, Suite 700
Beaumont, Texas 77701

15 409-654-6700
409-835-2115 fax

16

FOR THE DEFENDANT, GENERAL ELECTRIC COMPANY:

17

MR. TIMOTHY MCGOWAN

18 KELLEY JASONS MCGUIRE & SPINELLI, L.L.P.
Centre Square West, Suite 1500

19 1500 Market Street
Philadelphia, Pennsylvania 19102

20 215-854-0658
215-854-8434 fax

21

and

22

MS. KAY ANDREWS

23 BROWN MCCARROLL, L.L.P.
111 Congress Avenue, Suite 1400

24 Austin, Texas 78701-4043
512-479-9772

25 512-479-1101 fax

0003
1 FOR THE DEFENDANTS, VIACOM & FOSTER WHEELER
ENERGY CORPORATION:

2

MR. IVAN A. GUSTAFSON

3 EVERT & WEATHERSBY, L.L.C.
200 Cleveland Road, Suite 6

4 Bogart, Georgia 30622
706-583-8665

5 706-583-8525 fax

6 FOR THE DEFENDANT, TUTHILL CORPORATION:

7 MS. JOANNE EARLY
GARDERE WYNNE SEWELL LLP
8 3000 Thanksgiving Tower
1601 Elm Street
9 Dallas, Texas 75201-4761
214-999-3000

10 214-999-4667 fax

11 FOR THE DEFENDANT, MALLINCKRODT, INC.:

12 MR. MICHAEL L. BLAKENEY
JENKINS & MARTIN, L.L.P.

13 2615 Calder, Suite 500
Beaumont, Texas 77702

14 409-832-4100
409-832-4242 fax

15

FOR THE DEFENDANTS, INDUSTRIAL HOLDINGS CORPORATION,
16 F/K/A THE CARBORUNDUM COMPANY:

17 MR. KURT W. GREVE
FORMAN PERRY WATKINS KRUTZ & TARDY, PLLC

18 400 Woodview Tower
1349 Empire Central

19 Dallas, Texas 75247
214-905-2924

20 214-905-3976 fax

21 FOR THE DEFENDANTS, QUIGLEY COMPANY & PFIZER, INC.:

22 MR. LARRY W. THORPE
BEIRNE, MAYNARD & PARSONS, L.L.P.

23 1300 Post Oak Boulevard, 25th Floor
Houston, Texas 77056

24 713-623-0887
713-960-1527 fax

25

0004

1 FOR THE DEFENDANT, MONSANTO COMPANY:

2 MR. LAWRENCE E. GOLDENTHAL
ELLIS CARSTARPHEN DOUGHERTY & GOLDENTHAL P.C.

3 720 North Post Oak, Suite 330
Houston, Texas 77024-3834

4 713-647-6800
713-647-6884 fax

5

FOR THE DEFENDANTS, CERTAINTEED CORPORATION,

6 FOSECO:

7 MR. TODD J. SUDDLESON
DEHAY & ELLISTON, L.L.P.
8 3500 Bank of America Plaza
901 Main Street
9 Dallas, Texas 75202
214-210-2400
10 214-210-2500 fax
11 FOR THE DEFENDANT, CORHART REFRACTORIES
CORNING, INC.:

12
MR. MARK S. SCUDDER
13 STRASBURGER
901 Main Street, Suite 4300
14 Dallas, Texas 75202-3794
214-651-4654
15 214-651-4330 fax
16
FOR THE DEFENDANT, OAKFABCO, INC.:

17
MR. NICHOLAS S. BALDO
18 STEVENS, BALDO & FREEMAN, L.L.P.
550 Fannin Street, Suite 400
19 Beaumont, Texas 77701
409-835-5200
20 409-838-5638 fax
21
22

23 ALSO PRESENT:
Melanie Oliver

24

25

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1	(Witness sworn.)	
2	MS. NETTLE: Can we have an agreement it	
3	be taken pursuant to the rules and objection for one is	
4	good for all defendants?	
5	MR. TAYLOR: Yes.	
6	DR. DAVID EGILMAN,	
7	having been previously sworn, testified as follows:	
8	EXAMINATION	
9	BY MS. NETTLE:	
10	Q. Sir, could you state your name for the record?	

11 A. David Steven, with a V, Egilman,
12 E-G-I-L-M-A-N.

13 Q. And what is your business address?

14 A. 8 North Main Street, Attleboro,
15 A-T-T-L-E-B-O-R-O, Massachusetts 02703, Suite 404.
16 Best view in Attleboro.

17 Q. Do you live in Massachusetts?

18 A. I do.

19 Q. Did you bring any documents with you today
20 pertaining to this case, Marty Mitchell's case?

21 A. I did.

22 Q. What did you bring?

23 A. Well, I brought several sets of Elliott
24 Turbine interrogatories, I brought documents Elliott
25 Turbine has produced, I brought documents Elliott
0009

1 Turbine has not produced. I brought some National
2 Safety Council overheads during the time period Elliott
3 Turbine was a member of the National Safety Council.
4 When they forgot they were a member based on their
5 interrogatories. I brought some nice overheads from
6 that time period when they were a member of the
7 National Safety Council. I brought National Maritime
8 Commission meeting from 1942. I brought all of the
9 newspaper articles and other magazine articles and
10 medical literature from 1898 until last month.

11 Q. Where are these documents?

12 A. I'm not done with my list, ma'am. Let me just
13 finish my list. I brought all the medical records that
14 I was given by -- provided by Mr. Kaeske's law firm
15 which I will not represent are the total sum of all the
16 medical records in this case. I have depositions of
17 Mr. Mitchell. I have depositions of corporate
18 representatives of Elliott Turbine; 1, 2, 3 of those I
19 think. I have -- oh, let's see what else I have. I
20 have a little bit of -- I've got some Moody's on
21 Elliott Turbine. I've got a little chart of the
22 corporate history of Elliott Turbine. I've got -- what
23 else I got? Let me just think for a minute. Getting
24 towards the end of the list, probably another 10, just
25 15 things more. What else we got? Oh, I got the IHF
0010

1 Digests. I got -- let's see, oh, I got a Manville --

2 I've got a Manville 1954 marinite brochure. Use that
3 there on your product. I got some specifications for
4 your products. What else I got? I got the Dartez case
5 with me. Let's see. I think that's all I got, but if
6 I think of something, I'll be glad to remind myself and
7 fix that answer.

8 Q. Okay.

9 MS. NETTLE: I'm going to object to the
10 nonresponsive portion.

11 Q. Where are these documents?

12 A. Well, some of them is here, right here in the
13 room; some of them is in my room upstairs; some of them
14 are on my computer, which I can burn a CD ROM for you
15 and give it to you.

16 Q. Where are the documents that you brought in
17 the room with you?

18 A. Some of them are still in the room and some of
19 them is here.

20 Q. Is it -- are the only documents you brought to
21 this deposition room that stack right there in front of
22 the attorney?

23 A. Only because there's two boxes in my room and
24 we wanted to make sure we could start on time and --

25 THE WITNESS: What's your name?

0011

1 MR. TAYLOR: Taylor.

2 A. Mr. Taylor would be glad to go right up there
3 and get them right now.

4 THE WITNESS: Wouldn't you, Mr. Taylor?

5 MR. TAYLOR: I certainly would.

6 A. And so Mr. Taylor is going to go right up
7 right now and you could continue without Mr. Taylor.
8 No problem.

9 MS. NETTLE: I'm going to object to the
10 nonresponsive portion.

11 Q. Are the only documents you brought to the room
12 with you this stack right here? Yes or no?

13 A. At this particular moment. But Mr. Taylor was
14 supposed to be bringing those other boxes down. But
15 instead of doing that, he was just sitting here as a
16 potted plant. So I want to unpot him and have him
17 bring the rest of the documents down, okay? So why
18 don't you go upstairs.

19 Q. Sir, what are your fees in this case?

20 A. What are my fees in this case?

21 Q. Uh-huh.

22 A. You mean how much I generally bill?

23 Q. How much are you charging the Kaeske firm in
24 this case?

25 A. I don't know yet.

0012

1 Q. When are you going to make that determination?

2 A. I don't know. I haven't decided when I'm
3 going to do that either. I generally charge \$450 an
4 hour, 475 for depositions.

5 Q. So 475 an hour for depositions and 450 for all
6 other work?

7 A. Right.

8 Q. Does that include trial testimony?

9 A. Right.

10 Q. Do you have a retainer fee?

11 A. Yeah.

12 Q. How much is that?

13 A. \$2,500 for which I bill against.

14 Q. Have you been paid the retainer in this case?

15 A. That's an excellent -- that is the question of
16 the day. I do not know. I will check, though. That
17 is a -- let me write that down, retainer, check on
18 that.

19 Q. How many hours have you spent preparing in
20 this case?

21 A. For this case?

22 Q. Yes.

23 A. Well, it's really about the last 30 years
24 probably about 20 percent of my waking hours. But
25 specifically on this case, that is, reviewing

0013

1 Mr. Mitchell's medical records, which is the only part
2 of this case that I'd call specific review, I'd say
3 three or four hours.

4 MS. NETTLE: And I object to the
5 nonresponsive portion.

6 Q. So you spent three to four hours preparing
7 specifically for the opinions in the Mitchell case?

8 A. No, ma'am.

9 Q. All right. Have you spent -- what other time

10 than three to four hours have you spent specifically
11 pertaining to the Mitchell case, how many hours?

12 A. This is a rough guess, a very -- I'd have to
13 really figure up -- probably over 20,000 hours of
14 research goes into the opinions I'm giving in this
15 case.

16 Q. All right. What I'm asking, sir, is how much
17 time you have spent reviewing documents pertaining to
18 the Mitchell case specifically or preparing for
19 opinions specific to the Mitchell case?

20 A. As I said, ma'am, about 20 to 50,000 hours of
21 my research go into the opinions I will be giving in
22 this case.

23 Q. That was not the question I asked. How much
24 time have you spent preparing or reviewing documents
25 specific to the Mitchell case?

0014

1 A. Well, that goes to the three or four hours
2 that relate to Mr. Mitchell's medical records.

3 Q. All right.

4 A. And Elliott documents as well.

5 Q. All right. So your review of the Elliott
6 documents and the medical records took three to four
7 hours; is that correct?

8 A. No, let's go six.

9 Q. Helps your fees, right?

10 A. No, ma'am. Object to the sidebar.

11 Q. That wasn't a sidebar, that was a question.

12 A. Object to the question.

13 Q. Well, that's fine.

14 A. Not reasonably likely to end up in getting
15 some discoverable evidence. Intended to harass the
16 witness.

17 MS. NETTLE: I'm going to object to the
18 nonresponsive portion.

19 Q. Did you spend any additional time reviewing
20 the deposition of Mr. Mitchell?

21 A. No.

22 Q. That's included in the six hours?

23 A. Right.

24 Q. Okay. Can you tell me what percent of your
25 income annually you receive from asbestos-related

0015

1 litigation and consulting in asbestos-related

2 litigation?

3 A. Probably 60, 70 percent.

4 Q. How many times have you testified in a

5 deposition?

6 A. All my life?

7 Q. Yes.

8 A. Probably 3, 400.

9 Q. How many times have you testified at trial?

10 A. 100, 150.

11 Q. What percent of those times that you were

12 deposed were for plaintiff rather than defendant?

13 A. None.

14 Q. You've never been retained by a plaintiff to

15 testify in asbestos-related litigation?

16 A. Different question. Yes, I have.

17 Q. All right. Well, what percent of the times

18 that you have been retained and have testified have

19 been for the plaintiff rather than the defendant?

20 A. Different question. None.

21 Q. So is it your testimony then that you've never

22 been retained by a plaintiff in a case where you've

23 given a deposition?

24 A. No.

25 Q. All right. Then tell me the number of times

0016

1 that has happened.

2 A. Probably 300.

3 Q. 300 of the 300 times you've been deposed has

4 been times you were retained by the plaintiff?

5 A. No. The 300 was an approximation. I've also

6 been retained at the request of defendants in asbestos

7 litigation and other litigation and have given

8 depositions.

9 Q. All right. And that is my question, sir.

10 What percent was for plaintiff and what percent was for

11 a defendant?

12 A. None.

13 Q. Explain that.

14 A. I don't testify for either side. I testify at

15 the request of people.

16 Q. What percent was at the request of the

17 plaintiff and what percent was at the request of the

18 defendant?

19 A. Percent of what?

20 Q. Times that you were deposed?

21 A. Well, most of the depositions are at the
22 request of defendants, like in this case.

23 Q. That's not my question. Please listen to my
24 question and answer my question. Of the times you've
25 been deposed, what percent were times you were retained
0017

1 by the plaintiff?

2 A. One question, maybe I'm not hearing right,
3 could you read back the last two questions, please?

4 (Requested portion was read.)

5 Q. The only question on the table is the last one
6 that I asked.

7 A. Thank you very much, ma'am. Could you reread
8 the last question before the last question?

9 (Requested portion was read.)

10 A. Just wanted to make sure I was listening
11 right. Of the times that I was deposed, I was
12 generally listed as a witness at the request of the
13 plaintiffs.

14 Q. And my question was: what percent of times
15 for the plaintiff?

16 A. I don't know.

17 Q. Can you give me a ballpark figure?

18 A. I could speculate.

19 Q. What would that estimate be?

20 A. What would my speculation be?

21 Q. Yes.

22 A. My speculation would be over 80 percent,
23 speculating.

24 Q. All right. Do you have a list of cases in
25 which you've previously given testimony, either at
0018

1 deposition or at trial?

2 A. No.

3 Q. Have you ever created one of those lists?

4 A. Yes.

5 Q. Do you still have that list?

6 A. No.

7 Q. Why not?

8 A. I don't know.

9 Q. Did you destroy the list?

10 A. Don't think so.

11 Q. Did you give it away?

12 A. Don't know.

13 Q. All right. What did you prepare that list
14 for?

15 A. A trial.

16 Q. Was it a federal court case?

17 A. Yes.

18 Q. And when did you prepare that list?

19 A. Don't recall, '93, '94, '95.

20 Q. Have you updated that list since the time it
21 was created and added any more cases?

22 A. I've prepared other lists.

23 Q. All right. Do you have in your possession --
24 and I don't mean in this room, I mean in your
25 possession -- any of those lists?

0019

1 A. I don't think so.

2 Q. Have you destroyed those lists?

3 A. I don't know.

4 Q. Where are they?

5 A. I don't know.

6 Q. Can you recreate those lists?

7 A. Probably not exactly.

8 Q. Have you ever provided the Kaeske firm with a
9 list of cases in which you've testified?

10 A. I doubt it.

11 Q. And so is it your testimony that you have no
12 list of the cases in which you've testified?

13 A. As far as I can recall, I have no current list
14 or old list of cases in which I've testified, but I
15 think Mr. Gustafson keeps a list.

16 Q. How many times have you been retained by the
17 Kaeske firm?

18 A. I don't know, 10, 15.

19 Q. How many times have you testified at
20 deposition or trial for the Kaeske firm?

21 A. At the request of you mean?

22 Q. Yes.

23 A. Between 5 and 10 probably.

24 Q. Have any of those been in Texas?

25 A. Sure.

0020

1 Q. Do you remember the names of any of those
2 cases?

3 A. No.

4 Q. Have you ever been disqualified as an expert
5 witness?

6 A. No.

7 Q. Have you ever been partially disqualified to
8 testify in any area of expertise?

9 A. Yes.

10 Q. And what are the circumstances surrounding
11 that?

12 A. In a Port Authority case in New York, the
13 special master ruled that I could not testify on ethics
14 generally. That is, I couldn't testify on abortion
15 ethics or ethics as it related to death and dying, but
16 that I could testify on occupational/environmental
17 ethics in that case. So that was a limitation on my
18 ability to testify as an ethicist in that case.

19 Q. Have you ever been disqualified -- well, let
20 me back up. Are you aware of a Havner motion,
21 generally, that term?

22 A. You mean have I read the Havner case?

23 Q. Okay. No, I'm asking if you're aware of a
24 motion to disqualify an expert under the Havner
25 opinion?

0021

1 A. Am I aware that a motion has ever been filed
2 under the Havner Texas case --

3 Q. Yes.

4 A. -- to disqualify a witness?

5 Q. Yes.

6 A. That's not my understanding of the law. My
7 understanding of the law is that Havner says that no
8 one can testify on a particular issue because there's
9 insufficient data. It's not a personal attack, it's a
10 question of general or specific causation and the
11 ability of anyone to give testimony. So it's not like
12 this person can or that person can't.

13 MS. NETTLE: I'm going to object to the
14 nonresponsive portion.

15 Q. Has anyone ever filed a motion to exclude you
16 under either Daubert or Robinson or Havner cases to

17 your knowledge?

18 A. Oh, yes.

19 Q. Have any of those motions been granted or
20 partially granted?

21 A. Oh, no.

22 Q. You have listed earlier documents specific to
23 the Mitchell case, including medical records of
24 Mr. Mitchell, the deposition of Mr. Mitchell. Are
25 there any other documents pertaining to Mr. Mitchell
0022

1 specifically that you have reviewed?

2 A. Sure.

3 Q. What are they?

4 A. Coworker deposition, all these documents, all
5 the medical literature that relates to asbestos and
6 asbestos health effects, everything else on that list
7 that I reviewed relates to Mr. Mitchell.

8 MR. NETTLE: I'm going to object to the
9 nonresponsive portion.

10 Q. What coworker depositions have you reviewed?

11 A. I can't remember the name of the guy.

12 Q. Is it Lonnie Mitchell?

13 THE WITNESS: Let me ask.

14 MR. TAYLOR: Yeah.

15 A. Lonnie Mitchell.

16 Q. Can I see that stack of documents, please,
17 since you pointed to it and said "these documents"?

18 A. Sure. I don't want you to get my laundry tag
19 in there.

20 Q. All right. You've handed me a notebook which
21 appears to have printouts from the Elliott web page; is
22 that correct?

23 A. Uh-huh. That would be a yes.

24 Q. Is that the only thing in this notebook is
25 printouts from the Elliott web page?

0023

1 A. Well, it's printouts from -- I think so.

2 Q. Okay.

3 A. There's a nice picture of asbestos on turbines
4 on the front page though.

5 MS. NETTLE: Object to the nonresponsive
6 portion.

7 Q. All right.

8 THE WITNESS: Don't you want to mark

9 that? Do you want to mark that?

10 MS. NETTLE: Sir, I'm asking the

11 questions.

12 MR. TAYLOR: Let's mark the things we're

13 going to refer to as exhibits.

14 MS. NETTLE: I'm not referring to that as

15 an exhibit right now.

16 THE WITNESS: She asked me about it. I

17 want it marked.

18 MR. TAYLOR: If they're discussed in the

19 record, we want the record to be complete. Let's go

20 ahead and mark it. Let's mark that as Exhibit 1.

21 THE WITNESS: It took a lot of time to

22 download that, it's much easier to just make a copy and

23 distribute it.

24 Q. It appears you have here a letter from --

25 THE REPORTER: Do you want me to mark

0024

1 this or...

2 MR. TAYLOR: Yes.

3 THE WITNESS: Yes, that needs to be

4 marked.

5 MS. NETTLE: I'm not marking that as an

6 exhibit.

7 MR. TAYLOR: I am.

8 THE REPORTER: Well, just one second, I

9 can't mark and --

10 THE WITNESS: She can only do one thing

11 at a time. So let her mark it.

12 THE REPORTER: Do we want to agree to

13 mark this?

14 MS. NETTLE: I'm not marking that as an

15 exhibit.

16 THE WITNESS: There's no agree...

17 MR. TAYLOR: We don't have to.

18 MS. NETTLE: If they want to mark it --

19 THE WITNESS: There's no agreement on

20 marking exhibits. It was referred to in a deposition,

21 it's marked.

22 Q. You also have here an April 28th, 2000 letter

23 from DeHay and Elliston. It looks like a filing letter

24 for Elliott's discovery responses; is that correct?

25 A. That's correct.

0025

1 Q. And then you have a document behind that
2 entitled defendant Elliott Turbo Machinery's objections
3 and responses to plaintiff's master interrogatories and
4 request for production; is that correct?

5 A. I believe that's correct.

6 Q. And that was filed April 28th, 2000, correct?

7 A. That I don't recall, but I'll take your word
8 for it.

9 MR. TAYLOR: Together -- the letter and
10 responses go together. Let's mark those as Exhibit 2.

11 Q. You have more documents that are printouts
12 from the Elliott website, correct?

13 A. Yes.

14 Q. Are these different from the documents in the
15 notebook?

16 A. I don't know. I think it's a second copy.

17 MR. TAYLOR: I can clarify, counsel, if
18 you want me to. I think those are links from the main
19 website. It links you to those related websites, and
20 those are the printouts of those.

21 MS. NETTLE: So is it your understanding
22 then these are different from the --

23 MR. TAYLOR: Yes.

24 MS. NETTLE: -- the printouts of the
25 website in the notebook?

0026

1 MR. TAYLOR: Yes.

2 Q. So all the rest of these documents here are
3 printouts from web pages, correct?

4 A. As far as I know.

5 Q. So there's not other documents in that stack
6 you pointed to other than web-page information and
7 Elliott's answers to interrogatories filed April of
8 2000, correct?

9 A. In that stack, but now we have the other
10 stuff.

11 MS. NETTLE: Object as nonresponsive.

12 MR. TAYLOR: Let's go ahead and mark the
13 link websites as Exhibit 3.

14 MS. NETTLE: And I'm going to object to
15 the extent they're characterized as that because I

16 don't know what they are, but they are printouts from
17 websites it appears.

18 THE WITNESS: Okay. Let me just make it
19 clear that the first questions were about documents
20 that were in -- have now been labeled Exhibit 1, and
21 they were in a black binder. And it starts with --
22 there are some tabs in here starting with "home" and
23 going to "contact." Those are the first pages of the
24 website pages. And then there's Exhibit 2, which
25 identified -- which I identified as a cover letter from
0027

1 David Crowe to Sandra Humphrey, 44th District Court
2 Clerk, with attached interrogatory responses. And then
3 we have Exhibit 3 which I identified as links from the
4 web pages to other web pages, all Elliott pages.

5 Q. When were these --

6 MS. NETTLE: And I'm going to object,
7 there was no question pending.

8 Q. When were these printouts from the web pages
9 printed out?

10 A. Yesterday.

11 Q. And who printed them out?

12 A. Some of them I did and some of them -- I don't
13 know who did, someone from the firm did.

14 Q. The Kaeske firm?

15 A. Yeah.

16 Q. Can you tell me which ones you did?

17 A. No.

18 Q. And can you tell me which ones the Kaeske firm
19 did?

20 A. No.

21 Q. Do you know when the ones the Kaeske firm
22 printed out were printed?

23 A. Same day.

24 Q. Are there any documents in there other than
25 Exhibit 2 that were printed earlier than yesterday?

0028

1 A. I don't think so.

2 Q. I'm sorry, what?

3 A. I do not think so.

4 Q. Other than the medical records of

5 Mr. Mitchell, the deposition of Mr. Mitchell, the

6 deposition of Lonnie Mitchell, are there any other

7 documents specifically referring to Mr. Mitchell that
8 you've reviewed in this case?

9 A. The interrogatories in the case.

10 Q. The plaintiff's responses to interrogatories?

11 A. Those and your responses to the plaintiff's
12 interrogatories.

13 Q. But you have reviewed plaintiff's responses to
14 interrogatories?

15 A. I think so.

16 Q. Have you reviewed any other of Elliott's
17 responses to interrogatories besides the ones in
18 Exhibit 2?

19 A. Yes, I think I've seen three or four different
20 versions with different answers.

21 Q. And do you have those with you?

22 A. Some of them. I think I've got at least two
23 or three versions.

24 Q. Can you provide those for me?

25 A. I've got the Brayton version from California.

0029

1 I think I've got another Texas version from Baron &
2 Budd, and I've got, I think, a version from the ship
3 case from the Great Lake Shipping. So why don't you --
4 let me have -- let me move the plant a little bit and
5 he'll see if he can find them.

6 MR. TAYLOR: These are additional Elliott
7 discovery responses that we had in the boxes that we
8 brought down. I believe there may be one additional
9 one from California that somehow got separated from
10 these, and I'll locate it.

11 THE WITNESS: Actually the California one
12 was a request for admissions.

13 MS. NETTLE: Can I see those, please?

14 THE WITNESS: Either request for
15 admissions or request for document production only.

16 Q. Okay. You have handed me different sets of
17 documents. One is defendant Elliott's first
18 supplemental responses filed In Re: Asbestos in Dallas
19 County, correct?

20 A. Can I see it? That is correct.

21 MS. NETTLE: I think the court reporter
22 needs to mark the exhibits.

23 THE WITNESS: Oh, she does, I know.

24 MR. TAYLOR: If you'll hand me a sheet of
25 those, I'll...

0030

1 THE WITNESS: That's good. You must have
2 been watered today, actually doing some work. Go right
3 ahead.

4 MR. TAYLOR: If you talk to a plant, they
5 stay happy.

6 THE WITNESS: Go right ahead.

7 MS. NETTLE: Are you marking that as
8 what?

9 MR. TAYLOR: Exhibit 4.

10 Q. The next document is Elliott's second
11 supplemental responses and request for production filed
12 In Re: Asbestos in Dallas County, correct?

13 A. That's correct. Let's put a date on this. It
14 looks like the 26th day of April, 2001. Probably we
15 should put a date on the first one, that would be
16 Exhibit 4. The date on Exhibit 4 would be April 10th,
17 2001.

18 MS. NETTLE: And what have you marked?

19 MR. TAYLOR: We marked the last document
20 as Exhibit 5.

21 MS. NETTLE: Second supplemental?

22 MR. TAYLOR: Yes.

23 MS. NETTLE: And I'm going to object to
24 the nonresponsive statements.

25 Q. The next document I have is defendant

0031

1 Elliott's second supplemental response to plaintiff's
2 request for disclosure filed in the Malcolm Murphy case
3 in Dallas County; is that correct?

4 A. That's correct, dated the 20th day of March,
5 2001.

6 MR. TAYLOR: Let me mark that as Exhibit
7 6.

8 THE WITNESS: And I think that's going to
9 be marked as Exhibit 6.

10 Q. And then I have defendant Elliott's objections
11 and responses to plaintiff's second duces tecum
12 document requests filed in the Malcolm Murphy case in
13 Dallas County; is that correct?

14 A. That's correct. And the date on that is the

15 14th day of May, 2001. And that's going to be marked
16 Exhibit 7.

17 Q. Next document I have is defendant's Elliott's
18 objections and responses to plaintiff's duces tecum
19 document request also in the Malcolm Murphy case in
20 Dallas County; is that right?

21 A. That's right. And the date here is the 28th
22 day of April, 2000. And that will be marked Exhibit 8.

23 Q. And then I have Elliott's third supplemental
24 responses in, In Re: Dallas County Asbestos
25 Litigation; is that right?

0032

1 A. That's correct. And the date is March 4th,
2 2002, and that would be marked Exhibit 9.

3 Q. Now, all of these documents were filed in
4 Texas in re: or Texas cases, correct? The discovery
5 responses we've just gone through, were there any out
6 of state?

7 A. I don't know exactly whether these same were
8 filed in other states or not. I don't know where these
9 were retrieved from. At least one of them appears to
10 be from a particular case in Texas.

11 MS. NETTLE: I'm going to object to the
12 nonresponsive portion.

13 Q. Are any of these documents from out-of-state
14 cases?

15 A. I don't know where the documents were
16 obtained. I did not obtain the documents.

17 Q. Do any of these appear from the caption to
18 have been filed in out-of-state cases?

19 A. No.

20 Q. Now, you've mentioned something about
21 California responses to discovery, where are those?

22 A. They should be in the boxes here.

23 Q. Can you get those for me?

24 MR. TAYLOR: I didn't find them in the
25 boxes. I can go up and look for them in the room.

0033

1 THE WITNESS: Did you look on the floor
2 next to my...

3 MR. TAYLOR: No, there was that... I
4 thought it was complete.

5 MS. NETTLE: Do you want to take a break?

6 MR. TAYLOR: No.

7 THE WITNESS: No.

8 MR. TAYLOR: Continue.

9 Q. You also mentioned something about Great Lake
10 Shipyard case; what state was that?

11 A. I don't remember the state.

12 Q. Where are those responses?

13 A. They would be upstairs.

14 MS. NETTLE: Are you going to get both of
15 those?

16 MR. TAYLOR: What was that?

17 MS. NETTLE: Something about Great Lake
18 Shipyard case.

19 THE WITNESS: That's on the floor next to
20 my chair.

21 MR. TAYLOR: Okay.

22 Q. Are there any other responses to discovery
23 other than these we've marked as exhibits and the
24 California case and the Great Lakes case that the
25 attorney is going to get that you have reviewed?

0034

1 A. No, but I have another set coming and so I
2 will review those. Those are from Pittsburg.

3 MS. NETTLE: I'm going to object as
4 nonresponsive.

5 Q. Are there any others that you have reviewed?

6 A. No.

7 Q. Who provided you these documents?

8 A. You mean the discovery responses?

9 Q. Yes.

10 A. Oh, I think someone from Mr. Kaeske's firm
11 probably provided some of them, some of them were
12 probably provided by the Kazen law firm in California.
13 Oh, and that reminds me. In answer to your previous
14 question about what all I brought, we're bringing some
15 more stuff. These are demonstrative exhibits to be
16 used at trial and that's what they're bringing in now.

17 MS. NETTLE: I'm going to object as
18 nonresponsive.

19 Q. Who -- okay, Kaeske provided you some of the
20 discovery responses. The Kazen law firm provided you
21 some of the discovery responses. Who else?

22 A. That's all I could think of.

23 Q. Did you request --

24 A. Well, the Pittsburg ones are going to come
25 from Goldberg, Persky. If they can find them.

0035

1 Q. What firm is that?

2 A. Goldberg, Persky.

3 Q. Did you call either the Kazen firm or
4 Goldberg, Persky and request these responses?

5 A. Yes.

6 Q. When did you do that?

7 A. I don't know, last week or so.

8 Q. What prompted you to do that?

9 A. Your deposition notice.

10 Q. Did the Kaeske firm request that you do that?

11 A. No.

12 Q. Which documents did the Kaeske firm provide
13 you specifically, which of those interrogatory
14 responses?

15 A. The ones on the desk.

16 Q. The exhibits that have been marked?

17 A. Correct.

18 Q. All came from the Kaeske firm?

19 A. No, no, no, some came from Baron & Budd.

20 Q. Did you request those from Baron & Budd?

21 A. Yes.

22 Q. When did you do that?

23 A. Yesterday.

24 Q. When did you receive those?

25 A. Last night.

0036

1 Q. Were they hand delivered to the hotel?

2 A. I don't know how they were delivered.

3 Q. How did you get them?

4 A. They were at the hotel waiting for me when I
5 got here.

6 Q. Which of those on the -- which of the
7 interrogatory responses that we've marked came from the
8 Kaeske firm and which came from Baron & Budd?

9 A. I don't know.

10 Q. Do you have any way to determine that?

11 A. Yes.

12 Q. How is that?

13 A. I could call the Baron & Budd firm and ask

14 them what they sent.

15 Q. Did a cover letter come with the documents?

16 A. Not that I know of.

17 Q. Did you see a cover letter with them last
18 night?

19 A. No.

20 Q. Prior to -- well, when's the first time you
21 reviewed a document pertaining to Elliott? And just to
22 clarify --

23 A. Probably about eight years ago.

24 Q. All right. What document was that?

25 A. You mean directly associated to Elliott?

0037

1 Q. Uh-huh.

2 A. That's national council meeting papers from
3 1957 to 19 -- well -- and then up forward to that.

4 Q. When's the first time you reviewed a document
5 either prepared or filed in court by Elliott?

6 A. I have no idea.

7 Q. When is the first time you reviewed any
8 interrogatory responses of Elliott?

9 A. In the last week.

10 Q. When is the first time you reviewed any
11 documents produced in litigation by Elliott?

12 A. I have no idea.

13 Q. That you know of, when is the first time?

14 A. That I know of what?

15 Q. I'm not asking you what every document is
16 Elliott's produced. I'm asking you when is the first
17 time you looked at a document knowing it was a document
18 Elliott produced in litigation?

19 A. I don't know that to date, that any of the
20 documents were produced by Elliott in litigation.

21 Q. When we first started this --

22 A. Except for the interrogatories.

23 Q. When you first started this, you said some of
24 the documents you brought were documents Elliott had
25 produced in litigation. When you stated that, were you

0038

1 referring to these interrogatory responses?

2 A. Yes, and the -- and any documents that may
3 have been mentioned in the -- and attached to the
4 30-piece -- the six depositions.

5 Q. So other than interrogatory responses or
6 documents attached to the depositions, are you
7 referring to depositions of Ross Hackel?

8 A. That's the only ones I've seen.

9 Q. Okay.

10 A. There may be others, those are the only ones
11 I've seen.

12 Q. Other than documents attached to the
13 depositions of Ross Hackel or these interrogatory
14 responses, are you aware of any other documents that
15 you've reviewed that Elliott has produced in
16 litigation?

17 A. Well, the other documents that I reviewed that
18 relate to Elliott, some of them may have been attached
19 to some of these interrogatories and may have been
20 produced. I didn't go through them and can't swear
21 that that's the case, so it's, I imagine, likely that
22 some of the other Elliott documents that I reviewed
23 were produced in litigation, but I can't be sure.

24 Q. What other Elliott documents have you reviewed
25 besides the Ross Hackel deposition, any attachments to
0039

1 those, and these responses to discovery?

2 A. Well, all the stuff that I have on the table
3 that's already been marked.

4 Q. You're referring to the web printout pages?

5 A. Well, let's do it specifically. Exhibits 1
6 through 9 at this deposition.

7 Q. Okay.

8 A. And then all of these documents back here --

9 THE WITNESS: They're in that stack. Oh,
10 here's the California interrogatories. Oh, actually
11 it's request for -- it was request for production, I
12 was right. Sorry. No, I think she wants that pile
13 down there. Have you got more?

14 MR. TAYLOR: No.

15 A. Do you want the answer to the other question?
16 It starts with these. We can start with these. And
17 let me get some more for you.

18 MS. NETTLE: I'll mark this as Exhibit
19 10.

20 Q. Is this the California responses to discovery
21 you were referring to?

22 A. Yeah, but as I said, I misstated it first and
23 then corrected it. These are request for productions
24 of documents.

25 Q. But are those general responses to discovery
0040

1 from California that you were referring to?

2 A. I think that's a legal question I don't know
3 the answer to. I don't know whether requests for
4 production fall under that category or not.

5 Q. Is there any other discovery responses from
6 California you looked at besides those?

7 A. Not that I can recall.

8 THE WITNESS: So why don't we mark these
9 10?

10 Q. Any other Elliott document you've reviewed
11 besides Exhibits 1 through 10?

12 A. Yeah, this pile here.

13 Q. Are all these documents specifically
14 pertaining to Elliott?

15 A. As far as I can recall.

16 Q. Who provided you these documents?

17 A. Those exact ones in your hand?

18 Q. Yes.

19 A. I think they came from Baron & Budd.

20 Q. And when did you --

21 A. I'm not done with my answer, please. Similar
22 copies of those documents I had had from several
23 sources for at least 20 years, to many of those
24 documents.

25 Q. All right. The first document --

0041

1 A. I'm getting some more out, but go ahead.

2 Q. The first document's a June 1973 letter from
3 Elliott. Baron & Budd provided you this?

4 A. I think that pile came from -- I've got
5 several piles from different people. I think that's
6 the Baron & Budd pile. I think that's their pink
7 paper.

8 Q. Do you know what these documents in this stack
9 pertain to?

10 A. Yes.

11 Q. What?

12 A. In general, asbestos.

13 Q. What's your understanding of why Baron & Budd
14 had these documents, if you know?

15 A. My understanding of why Baron & Budd has those
16 documents is because they represented individuals who
17 were dead or dying from asbestos-related disease, and
18 those individuals had not been told of the risks of
19 work from asbestos exposure. And that in some cases
20 those risks had been known to the employers,
21 contractors and product manufactures and that in order
22 to recover compensation for medical expenses, pain and
23 suffering, to provide money for their spouses and
24 surviving children, they filed a lawsuit. And as a
25 result of that lawsuit and their need to prove or

0042

1 attempt to prove those things, they obtained those
2 documents. And in particular, they obtained those
3 documents with respect to Elliott turbines because
4 those workers were exposed to Elliott turbines or to
5 asbestos products that Elliott Turbines had specified
6 should go on their materials. And that Elliott
7 Turbines had failed to inform those workers,
8 bystanders, purchasers of their products and others of
9 the risks of exposure to various small amounts of
10 asbestos that would be placed on their turbines and
11 used around their turbines and placed workers in the
12 vicinity of those turbines at risk of inhaling those
13 asbestos fibers.

14 Q. Are you done with your answer?

15 A. No.

16 Q. And Elliott Turbines knew that those risks
17 existed through their membership in various
18 organizations and were obligated to know what those
19 risks were under the law in this country, delineated in
20 the case Dartez, and failed to inform the worker in
21 that case of the unreasonable risk of exposure to
22 products that they either sold directly or specified to
23 appear on their turbines and other products. And that
24 they failed to adequately train the workers who would
25 work on those turbines and they failed on their

0043

1 information sheets to turbine repair facilities to
2 inform them of the risks associated with working with
3 asbestos on those turbines. And that Baron & Budd

4 sought those documents in an effort to prove those
5 facts.

6 MS. NETTLE: Objection, nonresponsive.

7 Q. Is it your understanding that all of these
8 documents pertain to the Malcolm Murphy case filed by
9 Baron & Budd in Dallas County?

10 A. No.

11 Q. All right.

12 MS. NETTLE: If you don't have an
13 objection, we can attach this whole stack as one
14 exhibit.

15 MR. TAYLOR: I have no objection.

16 Q. And Dr. Egilman, can I fairly state that it's
17 your understanding this stack of documents, which will
18 be Exhibit 11, are documents Baron & Budd provided to
19 you yesterday evening?

20 A. That's my best estimate of how I acquired
21 those documents.

22 MR. TAYLOR: I will offer a rubber band.

23 Q. Did you find the discovery responses for this
24 Great Lakes case you mentioned?

25 A. The answer would be we're looking.

0044

1 Q. So at this time you don't have them?

2 MR. TAYLOR: Did you look through that
3 stack?

4 MS. NETTLE: They're not in there.

5 MR. TAYLOR: Not in there? That's the
6 stuff that was by the chair. Let me look through the
7 rest of this one more time.

8 Q. Other than Exhibits 1 through 11 and these
9 Great Lakes responses, have you reviewed any other
10 Elliott documents?

11 A. I don't think so.

12 Q. When were you first retained in this case by
13 the Kaeske firm?

14 A. I don't know.

15 Q. Do you know if it was a year ago or a month
16 ago?

17 A. I don't know.

18 Q. Can you give me a --

19 A. I have no recollection. I can't even
20 speculate.

21 Q. When's the first time you did any work
22 specific to this case referring to those six hours you
23 mentioned earlier?

24 A. Since I got your deposition notice.

25 Q. All right. Now, I heard through the
0045

1 grapevine, is it fair to say that you weren't happy
2 about coming down to Dallas for this deposition?

3 A. You've been talking to grapes?

4 Q. Uh-huh. Is that a fair statement or is that
5 wrong?

6 A. Well, it depends at what point in time.

7 Q. What do you mean?

8 A. Well, I had to miss my kid's soccer game last
9 night and the Red Sox/Yankee's game. Okay. So I was
10 not happy about that. But I am having a wonderful time
11 now.

12 Q. Are you aware --

13 A. And it's making up for it, and my son really
14 enjoys reading these depositions, particularly when he
15 gets mentioned.

16 Q. Are you aware the Kaeske firm offered you for
17 deposition in Dallas today at 10:00 o'clock?

18 A. I am aware of that.

19 Q. And the notice was done according to the time
20 and place provided by the Kaeske firm that retained
21 you?

22 A. I'm aware of that.

23 Q. When was the first time --

24 A. I bear you no grudges, if that's the question.

25 MS. NETTLE: Object as nonresponsive.

0046

1 Q. When was the first time you had any
2 discussions with the Kaeske firm on this case?

3 A. I don't recall.

4 Q. What discussions do you recall having with the
5 Kaeske case -- Kaeske firm on this case?

6 A. Some scheduling questions about when I would
7 be available to -- for trial. That would be the first
8 that I could specifically recall.

9 Q. What other discussions have you had with the
10 Kaeske firm on this case?

11 A. What other discussions? We've discussed --

12 Q. I want to know every discussion you've had
13 with the Kaeske firm pertaining to the Mitchell case?

14 A. I had some discussions with them about
15 scheduling this deposition.

16 Q. Yes, you mentioned that. What else?

17 A. I had discussions with them about providing me
18 materials. I had discussions with them about bringing
19 demonstrative exhibits. I had discussions with them
20 about breakfast and my inability to get bagels and lox.
21 I had discussions with them about being here on time,
22 and I had discussions with them about Mr. Taylor
23 leaving to go get the rest of the material that we
24 didn't bring at the beginning. I had discussions with
25 them about my interest in concluding this deposition as
0047

1 expeditiously as possible. That's all I can recall.

2 Q. Did you ever have any discussion about what
3 they were asking you to do in this case?

4 A. Yes.

5 Q. When was that?

6 A. It would have come up around the time of the
7 scheduling of the trial testimony.

8 Q. And can you tell me when that was?

9 A. It would have been a couple of months ago, I
10 don't know, six, eight weeks.

11 Q. And what did they ask you to do in this case?

12 A. They asked me to be prepared, to be familiar
13 with Mr. Mitchell's medical records to determine what I
14 thought had caused his disease -- what I thought -- why
15 he died and what I thought the cause of his death was,
16 if any. What was known when about the general state of
17 the art with respect to hazards from exposure to
18 asbestos and asbestos-containing products. What was
19 known specifically by the Elliott Turbine company about
20 asbestos and asbestos-containing products, and that
21 means what was known, what should have been known, what
22 could have been known. What Elliott's response was to
23 that information. Whether or not Elliott Turbine acted
24 reasonably based on the knowledge it had or should have
25 had. Whether the products that Elliott Turbine made or
0048

1 specified to be made was specified to be placed on its
2 equipment were unreasonably dangerous. Whether or not

3 based on the Texas definition of conscious disregard
4 for the health of Mr. Mitchell in my opinion Elliott
5 had exhibited such by their failure to take any action
6 whatsoever to inform Mr. Mitchell or anybody else about
7 the known hazards of exposure to asbestos that was used
8 on, specified by or sold by Elliott to be used on its
9 turbines and/or provided or not provided to workers who
10 were designated to repair its turbines and boilers and
11 other products. Whether Elliott had truthfully
12 answered its interrogatory answers. Whether Elliott
13 had ever been convicted of a felony. That's it.

14 (Dr. Egilman and Mr. Taylor confer.)

15 MS. NETTLE: Object to the nonresponsive
16 portion.

17 Q. Is it your testimony that someone at the
18 Kaeske firm asked you to specifically form an opinion
19 on each of those topics you just mentioned?

20 A. Yes.

21 Q. Who at the Kaeske firm asked you to do that?

22 A. That would be Mr. Kaeske.

23 Q. When did you and Mr. Kaeske talk about those
24 issues?

25 A. Whenever we were scheduling the trial.

0049

1 Q. And that was six to eight weeks ago?

2 A. Yeah, as far as I can recall.

3 Q. Have you been asked to look at any other
4 documents specific to any other defendant in this case
5 by the Kaeske firm?

6 A. No.

7 Q. Are you prepared to render any -- offer any
8 opinions -- no, let me change that. Have you been
9 asked to offer any opinions about any other defendants
10 specifically in this case?

11 A. Was that -- how would you -- asked to?

12 Q. Has the Kaeske firm requested that you form
13 any other opinions or look at these matters as to any
14 other defendant in this case?

15 A. Specifically asked?

16 Q. In the Mitchell case?

17 A. No, only specifically asked about Elliott.

18 Q. Okay. And is it your testimony that six to
19 eight weeks ago they asked you to render an opinion on

20 why Mr. Mitchell died and his cause of death?

21 A. As far as I can recall.

22 Q. Did you have any other discussions on the
23 opinions you'd be asked to render since that
24 conversation with Mr. Kaeske six to eight weeks ago?

25 A. Sure.

0050

1 Q. When was that?

2 A. Yesterday, today.

3 Q. Who did you talk to yesterday from the Kaeske
4 firm?

5 A. Mr. Kaeske.

6 Q. And what did you and he discuss?

7 A. The fact that he had viral meningitis and just
8 got out of the hospital.

9 Q. What else did you discuss pertaining to your
10 opinions in this case yesterday with Mr. Kaeske?

11 A. Well, that he couldn't discuss much of my
12 opinions based on his mental status at the time.

13 Q. What else?

14 A. That would be it.

15 Q. Did you talk to anybody else with the Kaeske
16 firm yesterday?

17 A. Yes.

18 Q. Who else?

19 A. Eric Manchin.

20 Q. And what did you and Eric Manchin discuss?

21 A. I told him to download all those pages from
22 the website and make sure they were here. And I told
23 him to go to the library and get these sections from
24 Moody's and make sure they were here. And I told him
25 to make sure that the Baron & Budd materials were here

0051

1 at the hotel and make sure that a copy of the medical
2 records was here at the hotel.

3 Q. So you didn't have -- or did you have the
4 copies of the medical records before you came here?

5 A. I did, but I didn't bring anything because I
6 was in a hurry.

7 Q. Do you know whether or not the medical records
8 that he sent here are the same ones that you reviewed
9 prior to traveling here?

10 A. I didn't check them page by page, but I could

11 do that later.

12 Q. Do you have a list of the medical records you
13 reviewed in this case?

14 A. No, I have the medical records that I reviewed
15 that were brought here.

16 Q. You have the records Eric Manchin sent to you
17 at the hotel last night?

18 A. Right, they're here.

19 Q. But you don't have the specific ones you
20 reviewed in preparation for the case?

21 A. I reviewed those in preparation for the case.

22 Q. Did you review the ones that were sent to you
23 previously?

24 A. Yes.

25 Q. So you've reviewed the medical records twice?
0052

1 A. Yeah. I'm not sure if it's the same ones or
2 not.

3 Q. Okay. Any other --

4 A. It's a big thick notebook. I didn't go
5 through it page by page. They're not numbered or Bates
6 numbered.

7 Q. Can I get a copy of that notebook?

8 A. Certainly. Let's mark it as an exhibit. That
9 would be Exhibit 12 that I just handed you which is the
10 medical records brought to the hotel by Mr. Manchin.

11 Q. And you can't tell me as you sit here today
12 whether or not the medical records that were sent to
13 you previously are the same or there's any additional
14 ones than what's in this notebook?

15 A. I believe that they're substantially similar.

16 Q. All right. I'm just getting at -- you can't
17 tell me any others that aren't in here that Eric left
18 out, right? You don't have any that you remember, oh,
19 I also looked at the records from so and so hospital
20 and they're not in the book?

21 A. Yeah, you know, what's not in the notebook is
22 the path report from Battifora.

23 THE REPORTER: The what?

24 THE WITNESS: Battifora's path report.

25 A. So I don't think I had that before.
0053

1 Q. All right. Other than that, are there any

2 others that stand out as being missing from the
3 notebook that you reviewed, medical records?

4 A. No, but I didn't check it page by page or even
5 close.

6 Q. I understand. I'm just asking if there's any
7 you remember?

8 A. I understand that you understand. But I want
9 to make sure that the record is clear.

10 Q. Anything you and Eric talked about other than
11 the documents he should get for you?

12 A. Yes.

13 Q. What else?

14 A. I told him to bring a printer to the hotel.

15 Q. Why?

16 A. So that I could print.

17 Q. Okay. Were you printing anything pertaining
18 to this case?

19 A. Yes.

20 Q. What were you printing?

21 A. Well, a lot of things. Let's show her some of
22 the printouts.

23 Q. I don't want to see them. I'm asking you what
24 you printed.

25 A. If you're asking what I printed and I have
0054

1 what I printed, it's easier to -- well, all right, you
2 don't want to --

3 Q. Can you list --

4 A. No, that's okay. You don't want to see them,
5 I'll tell you what I printed. No problem. I'll answer
6 that question. This document's titled, Knowledge of
7 Risks to Product Users, date 10/7/43. Author,
8 Lawrence, W.E. Description: The control of fumes in
9 shipyards. Transactions of 32nd National Safety
10 Congress. The use of water repellent asbestos
11 insulation has recently replaced some types of
12 materials formerly used in ship --

13 Q. I'm going to stop you.

14 A. -- formerly used in ship work --

15 Q. Sir, I don't want you to read --

16 A. -- for protection against --

17 Q. -- all these documents into the record.

18 THE REPORTER: I can only take one person

19 at a time.

20 A. -- possible asbestos from such material it is
21 recommended that both on ships and in shops or where
22 the material is prepared --

23 MS. NETTLE: Objection, nonresponsive.

24 A. -- it be dampened and that dust respirators
25 be worn. Also that special ventilation be provided.

0055

1 Q. Sir, can you give me a list --

2 A. -- medical examination --

3 Q. -- of these --

4 A. -- of those exposed to such hazards --

5 Q. -- documents --

6 A. -- is also necessary.

7 Q. -- you've printed?

8 A. Document number two that I printed. Knowledge
9 of health hazards --

10 Q. Dr. Egilman --

11 A. -- date, 1949.

12 Q. -- are you going to read every document into
13 the record?

14 A. What the safety engineer should know about
15 industrial health hazards. National Safety Council.
16 Comments: These hazards might be found in the form of
17 dust as silica, asbestos, lead and other metals,
18 etcetera. In the form of vapors such as benzine --

19 MS. NETTLE: I'm going to object as
20 nonresponsive --

21 A. -- chlorinated hydrocarbon and the like.

22 Third document --

23 MS. NETTLE: -- and I'm going to object
24 as nonresponsive and I'm going to object that any time
25 is used against our time in this deposition.

0056

1 A. -- that I printed. Knowledge of health
2 hazards. Date, 19 --

3 THE REPORTER: Doctor, Doctor, just a
4 second. I'm sorry, I'm not writing. I can't write
5 both of you at the same time.

6 A. Excuse me. I'm the answerer of the question.
7 I can only answer one question at a time.

8 Q. You're not answering my question. I'd like a
9 list -- I don't want you to read the documents into

10 the record.

11 THE WITNESS: You can now object.

12 MR. TAYLOR: Object, don't interrupt the
13 witness.

14 Q. I want you to tell me the list of the
15 documents. I don't want you to read them into the
16 record.

17 MS. NETTLE: I'm going to object that all
18 this time is not used against us.

19 MR. TAYLOR: You asked him to describe --

20 THE REPORTER: I can only write one
21 person at a time.

22 THE WITNESS: You just make an objection
23 and shut up, and I'm going to finish answering the
24 question. Did you object?

25 MR. TAYLOR: Object, you're interrupting

0057

1 the witness.

2 THE WITNESS: Thank you.

3 A. Now I will continue.

4 Q. Sir, I --

5 A. -- knowledge of health --

6 Q. -- I have a different question on the table.

7 A. -- hazards. Date, 1957.

8 Q. Are you going to --

9 A. What did you say?

10 Q. -- refuse to answer my next question?

11 A. What did you do? I'm trying to answer your
12 last question. It's still on the table.

13 Q. You're not answering my last question.

14 A. Because you answered -- well, then the record
15 will decide that and some judge will decide that.

16 Q. I don't want you to read every document --

17 A. I don't care what you want. You asked the
18 question, I'm entitled to give an answer, ma'am. If
19 you don't want me to answer your questions, don't ask
20 them or withdraw them. The question on the table is
21 what did I print off? I offered to show them to you.
22 You said no, what did you print off, I want to know,
23 and I'm reading you what I printed off. That was the
24 question and that's what I'm answering.

25 Q. I want a list --

0058

1 A. Ma'am, now that there's a record -- then you
2 withdraw the last question, please.

3 Q. I would like you to tell me a list of what you
4 did.

5 A. Thank you. Did you withdraw the last
6 question?

7 Q. I will withdraw the last question.

8 A. Fine, thank you.

9 Q. Can you give me a list of the documents you
10 printed out?

11 A. No, I do not have a list.

12 Q. All right. Now I would like to see the
13 documents that you printed out. Is this stack the
14 entire documents you printed out? Sir?

15 A. I'm looking.

16 MS. NETTLE: Can we go off the record
17 since the witness has left the room?

18 MR. TAYLOR: We can go off the record
19 briefly.

20 (A break was taken from 11:19 to 11:28.)

21 Q. (BY MS. NETTLE.) All right. These documents
22 that you printed, were they e-mailed to you from
23 somewhere or did you print them off some type of
24 database? What's the source of these documents?

25 A. They're in Word files on my computer.

0059

1 Q. Are these documents you created or your office
2 created?

3 A. I or my staff.

4 Q. And the first looks like an exhibit list. Is
5 that what it is?

6 A. No.

7 Q. What is it?

8 A. Can I see it? Okay. Why don't we mark it so
9 the record's clear. Okay.

10 MR. TAYLOR: Exhibit 13.

11 A. 13. Exhibit 13 is a list of a Word database.
12 It's cut off on the right; I'll be glad to get you a
13 nicer copy. But the cites are correct so I'm sure
14 they'd be in Elliott's file since they were a member of
15 the National Safety Council at the time. These are
16 quotes from articles relating to health and safety that
17 would have been mailed to Elliott as a -- when it was a

18 division of Carrier air-conditioning. And these are
19 quotes on health and safety during that time period,
20 1957 forward. The first one is earlier than Carrier
21 was a member. But the others are in the time period
22 which -- these would have been mailed to Elliott
23 Turbines.

24 MS. NETTLE: I'm going to object to the
25 nonresponsive portion.

0060

1 Q. Are these then a list of documents from the
2 National Safety Council?

3 A. No.

4 Q. All right. Are they a list of documents
5 from -- are all the documents listed on here from one
6 organization?

7 A. Yes.

8 Q. What organization?

9 A. National Safety Council.

10 Q. Do you have any evidence that Elliott actually
11 received these documents?

12 A. Yes.

13 Q. What is that evidence?

14 A. Elliott was a division of Carrier
15 air-conditioning from 1957 on, Carrier air-conditioning
16 was a member of the National Safety Council. There's
17 depositions of -- first, I'm a member of the National
18 Safety Council so I'm generally familiar with the
19 practices of the National Safety Council. These were
20 presented at National Safety Council meetings, which
21 were held twice a year, and then transcribed and mailed
22 out in something called transactions of the National
23 Safety Council. And those would have been mailed to
24 all members of the National Safety Council, which means
25 those are excerpts from articles that would have been

0061

1 mailed to the Elliott Turbine company during that time
2 period.

3 MS. NETTLE: Objection, nonresponsive.

4 Q. Do you have any evidence that anyone at
5 Elliott actually received these documents?

6 A. No.

7 Q. Do you -- is it your testimony that Elliott
8 itself, not as a division of Carrier, was ever a member

9 of the National Safety Council?

10 A. Yes.

11 Q. When is it your belief that Elliott itself was
12 a member of the National Safety Council?

13 A. I don't know. At a minimum, 1974 onward,
14 but -- well, Elliott of itself -- first of all, Elliott
15 -- there was no Elliott in this 1957 time period.
16 There was only Cargill of which Elliott was a division.

17 MR. TAYLOR: Didn't you misspeak?

18 THE WITNESS: What?

19 MR. TAYLOR: Only what -- I think you
20 said Cargill.

21 A. I misspoke. Only Carrier. So from '57 on --
22 I got a corporate history. If you let me look at that
23 time line, I'll tell you -- give you exact years here.

24 MS. NETTLE: I'm going to object to
25 nonresponsive.

0062

1 A. Let me finish the answer before you object
2 nonresponsive. I might -- so that the judge has a
3 complete idea of what the answer is before he rules, if
4 you don't mind.

5 THE WITNESS: I think it's in the pile
6 she has in her hand.

7 Q. Before you look at any documents, I just want
8 to know --

9 MS. NETTLE: Can you repeat my question?
10 Read back my question?

11 (Requested portion was read.)

12 Q. And you started to answer from 1974 onward.
13 Is that your testimony? That's when Elliott itself,
14 not as --

15 A. Excuse me, excuse me, excuse me. You have now
16 reread the question, that's fine. Now, I get to finish
17 my answer. Thank you.

18 Elliott itself in its interrogatories
19 admits it was a member from 1974 onward. Elliott did
20 not exist except as a subdivision of Carrier
21 air-conditioning. And where you interrupted me was I
22 needed that time line to know the exact years to know
23 when they were a member. So if you could give me the
24 time line that I have there to know when they were
25 owned exactly by Carrier air-conditioning, I can tell

0063

1 you when Elliott itself was a member.

2 Q. Before we get to that, do you have an
3 objection that this whole stack is Exhibit 13?

4 A. I have an objection to doing anything but me
5 finishing my answer when I'm in the middle of an
6 answer. So could you please pass that document back to
7 me so I can finish my answer?

8 MS. NETTLE: Do you have an objection to
9 put this whole stack as Exhibit 13 rather than having
10 to --

11 THE WITNESS: I would like to finish my
12 answer before you interrupt with anything.

13 MR. TAYLOR: We can address that later.

14 A. Elliott became a member of the National Safety
15 Council in 1957 through the Carrier Corporation and
16 then continued as a member of the National Safety
17 Council when it became a subsidiary of the United
18 Technologies Corporation, which was a member of the
19 National Safety Council, and the ending -- I think the
20 interrogatories say that they were a member of the
21 National Safety Council even after they were purchased
22 by the Japanese company Ebara in the year 2000.

23 MS. NETTLE: Objection as nonresponsive.

24 MR. TAYLOR: I have no objection to mark
25 those all as one exhibit if you want to do that.

0064

1 MS. NETTLE: Do you want to put that back
2 with this so it's all together?

3 MR. TAYLOR: That's fine.

4 THE WITNESS: Excuse me. Let's just take
5 a quick break before your next question.

6 (A break was taken from 11:34 to 11:35.)

7 THE WITNESS: Thank you.

8 Q. (BY MS. NETTLE.) You have referred to a time
9 line in this Exhibit 13, and what did you use to create
10 this time line, what document specifically?

11 A. I think that comes from Moody's and Dow Jones.

12 Q. Any other document you used to create that
13 besides Moody's and Dow Jones?

14 A. I don't think so.

15 Q. You've --

16 A. And I didn't create it. My staff created it.

17 Q. When was it created?

18 A. Last couple of days.

19 Q. You've referred to Moody's a couple of times.

20 Do you have that printout you relied on --

21 A. No.

22 Q. -- or your staff relied on?

23 A. I have some of them, I don't have all of them.

24 I have the ones that I asked Mr. Manchin -- I asked him

25 to get them all. He only managed to get these three

0065

1 years or four years.

2 Q. All right. And --

3 A. My staff relied on a more complete analysis of

4 Moody's available in the library.

5 Q. Do you know what years your staff relied on

6 for Moody's?

7 A. Some time beginning in the early '20s or '30s

8 I think.

9 Q. Did they check every year?

10 A. I don't know. I think they checked enough so

11 they could get the corporate history that you see in

12 that sheet.

13 Q. But you don't know -- you can't tell me which

14 years they looked at, which years they didn't?

15 A. Correct.

16 MS. NETTLE: I want to attach these

17 Moody's printouts that Eric Manchin provided to you as

18 the next exhibit, 14.

19 Q. Do you have the Dow Jones material you believe

20 your staff relied on in creating the time line?

21 A. No.

22 Q. Also in Exhibit 13 is a sideways chart. Can

23 you give me a one-sentence description of what this is?

24 A. No.

25 Q. All right. Are all these documents --

0066

1 A. Not without being misleading.

2 Q. Are all these documents referred to on this

3 chart from the National Safety Council?

4 A. I don't know. I'm not looking at the chart.

5 You have the chart in your hands.

6 THE WITNESS: Can we mark this so it's

7 clear, please?

8 MR. TAYLOR: That's part of Exhibit 13.

9 THE WITNESS: It doesn't matter. I'm

10 separately identifying it, it needs to be separately
11 marked.

12 MR. TAYLOR: Let's mark it as -- mark it
13 as Exhibit 15 and separate this from the original.

14 MS. NETTLE: That's fine. And it's
15 understood that this was pulled out from 13 which are
16 the documents that you printed at the hotel.

17 A. Okay. This stack of documents I labeled 15 A
18 through J. And what's the question you have?

19 Q. Can you give me a brief deposition of what it
20 is?

21 A. A brief and incomplete description of what it
22 is would be misleading.

23 Q. So now you are not able to tell me what that
24 document is in a brief form?

25 A. No, I can do that but it might be misleading.

0067

1 Q. Why don't you give it a shot?

2 A. Sure. This is a list of excerpts from
3 articles from the National Safety Council publications
4 that were mailed to members of the National Safety
5 Council with -- that referred to hazards of asbestos
6 and other dusts, ways of preventing those dusts from
7 causing disease in human beings and the obligations of
8 employers and product suppliers to take precautions so
9 that workers would not be injured.

10 Q. And do you have copies of the articles those
11 quotes came from?

12 A. Sure.

13 Q. The rest of the documents in Exhibit 13 appear
14 to be overheads or displays. Are these documents
15 things you use at trial for demonstrative purposes?

16 A. There were three questions there. Would you
17 like me to answer them one at a time?

18 Q. There was only one question.

19 A. Well, you have a long predicate that I can't
20 remember or agree with.

21 Q. I'll ask it again without the predicate. Are
22 these documents overheads or exhibits that you use at
23 trial?

24 A. And other places, yes.

25 Q. Have you written a report in this case?

0068

1 A. No.

2 Q. Did you have discussions with anyone at the
3 Kaeske firm today?

4 A. Yes.

5 Q. In preparation for this deposition?

6 A. Yes.

7 Q. Who did you meet with?

8 A. Mr. Taylor.

9 Q. How long did you meet with Mr. Taylor
10 approximately?

11 A. 25 minutes. Part of that time I was taking a
12 shower. He was not in the shower.

13 MR. TAYLOR: I was not present.

14 MS. NETTLE: I don't know if I want to
15 know about that.

16 MR. BALDO: Let the record reflect...

17 Q. Okay. What were the nature of your
18 discussions with Mr. Taylor this morning?

19 A. We talked about breakfast, couldn't get bagels
20 and lox. We talked about the Red Sox, how I --
21 although I did miss the game, they at least did win.
22 Talked about moving the boxes. I think that's it.

23 MR. TAYLOR: My tip.

24 A. Oh, we talked about the size of his tip at
25 breakfast. It was a large tip.

0069

1 MR. TAYLOR: I wanted that on the record.

2 Q. Did you discuss anything specific to the Marty
3 Mitchell case?

4 A. Yes.

5 Q. What did you discuss?

6 A. Moving the boxes.

7 Q. Other than what you've told me about already,
8 did you discuss anything specific to the Marty Mitchell
9 case?

10 A. I don't think so.

11 Q. Do you plan to attend trial in this case and
12 testify?

13 A. Depends when the trial is.

14 Q. The trial, I'll represent to you, is currently
15 scheduled for June 16th. Do you plan to attend and

16 testify?

17 A. I have no current plans to attend. I think I
18 will be back in the country at that time and be able to
19 attend.

20 Q. Did you bring with you a current copy of your
21 CV?

22 A. No, but I can go print one off or we could
23 send Mr. Taylor upstairs and he can try to print one
24 off.

25 Q. What's the most recent update of your CV, if
0070

1 you know?

2 A. The most recent update of my CV is probably
3 this week or last week.

4 Q. I'd ask that either at a break or after the
5 deposition you provide me an updated copy of the --
6 your CV.

7 MS. NETTLE: Mr. Taylor, can you agree to
8 provide that, get that and provide that? Mr. Taylor?

9 MR. TAYLOR: I'll agree.

10 THE WITNESS: Excuse me, I don't -- she
11 asked you.

12 MR. TAYLOR: I'll agree to do that.

13 MS. NETTLE: Thank you.

14 Q. I have what is likely an old CV, which I'll
15 let you look at. Is that current or is that old?

16 A. That's old.

17 Q. Can you tell from it what date it was from?

18 A. No.

19 Q. Okay.

20 A. It's got nice Bates numbers on it though.

21 Q. It appears from your CV that you
22 professionally do a number of things. You're a medical
23 doctor, correct?

24 A. Correct.

25 Q. You're a professor?

0071

1 A. Clinical associate professor.

2 Q. You do, as you testified earlier, consulting
3 in asbestos litigation?

4 A. Correct.

5 Q. And do you do consulting in other types of
6 litigation, such as drug litigation or other areas?

7 A. Yes.

8 Q. What percent of your professional time do you
9 spend doing medical practice?

10 A. 75.

11 Q. And what percent do you spend teaching?

12 A. I consider teaching to be part of what you do
13 as a physician.

14 Q. All right. My question wasn't clear then.

15 Let me see if you can divide it up this way.

16 A. Particularly when I'm a professor at a medical
17 school.

18 Q. If I were to ask you to divide your time up
19 percentagewise, and I understand it would be an
20 estimate, between practicing medicine in your practice,
21 between teaching and between litigation consulting,
22 would you do that for me?

23 A. No.

24 Q. Why not?

25 A. Because what you mean by practicing and what I
0072

1 mean by practicing may be two different things. I
2 think are likely to be two different things.

3 Q. Are you able to --

4 A. So I can do it if you want me to define
5 things.

6 Q. Are you able to divide the time you spend
7 teaching from all the other medical time you spend?

8 A. Yeah, but I think that would be misleading to
9 you. If you'd like, I'd be glad to help you out and
10 give you the answer to the question that you want or
11 I'd be glad to ask the question and give you the
12 answer.

13 Q. What percent of your professional time do you
14 spend teaching or in activities, you know, such as
15 grading papers or anything like that directly related
16 to your courses that you teach?

17 A. Well, two of my teaching activities are not
18 courses so there's difficulty in answering the question
19 for that reason at least.

20 Q. What percentage of your professional career do
21 you -- in an average year, say, what percentage of your
22 time is spent in teaching and teaching-related
23 activities?

24 A. 25.

25 Q. In an average year, what percent --

0073

1 A. Wait, wait, let me make that 50.

2 Q. In an average year, what percent of your time
3 is spent on litigation-related activities?

4 A. 20 to 25.

5 Q. And what is the remainder of that time spent
6 on?

7 A. The administering of activities, fund-raising.
8 I consider doing research part of my teaching, but if
9 you wanted to split that off, research.

10 Q. Was research included in the 50 percent of the
11 teaching?

12 A. Yes.

13 Q. Okay.

14 A. Consulting.

15 Q. What type of consulting?

16 A. Consulting for companies on occupational
17 environmental health issues, consulting for countries
18 and medical schools and WHO. And I think that's it.

19 Q. And that makes up the remaining 25 percent?

20 A. Probably so.

21 Q. Do you still have a medical practice where you
22 treat and see patients?

23 A. I treat and see patients as part of my faculty
24 position in -- at Brown when I supervise residents in
25 the family practice residency program.

0074

1 Q. All right. Do you have your own practice
2 where you treat and see patients? Do you have a
3 private practice where patients come to you and say Dr.
4 Egilman is my doctor, he treats me; that kind of
5 practice?

6 A. No.

7 Q. So you're -- your doctor/patient contact comes
8 as a part of your teaching; is that correct?

9 A. Or consulting because I will occasionally see
10 patients when I'm consulting internationally.

11 Q. Now, when you're supervising residents, do you
12 do the actual treatment of the patients or are you
13 supervising the residents who do the treating of the
14 patients?

15 A. I don't think I understand the question.

16 Q. You mentioned that your medical practice comes
17 in as a part of your training of residents; is that
18 correct? In the medical school?

19 A. Part of it, right.

20 Q. All right. Of that time when you are
21 supervising the residents, do you do hands-on treatment
22 of patients?

23 A. You mean do I examine the patients?

24 Q. Yes, and treat them and diagnose them?

25 A. Yes, with the residents or medical students.

0075

1 Q. And what percent of your teaching time is
2 spent doing that sort of thing?

3 A. Five percent.

4 Q. The rest of that teaching time, is part of
5 that consumed by teaching a class? I'll rephrase it.
6 I'm trying to figure out what makes up the rest of the
7 time you spend in teaching-related activities?

8 A. I offered to help you by answering --
9 answering a question or giving you an explanation. So
10 go right ahead and try. Your question.

11 Q. Of the rest of the time you spend in teaching
12 and teaching-related activities, does part of that
13 include teaching a course or courses?

14 A. Yes.

15 Q. And part of that you mentioned is research.
16 What else is -- what else do you do as part of
17 teaching?

18 A. Look, you just made a statement, a predicate.
19 You didn't give me a chance to answer the question and
20 then you ran off into another question. Do you want to
21 ask that first question and wait for an answer or --
22 I'm not going to answer any more questions. I can only
23 answer one at a time.

24 Q. Is it correct or incorrect that you just a few
25 moments ago testified that you consider your research

0076

1 part of your teaching time?

2 A. It's part of -- yes.

3 Q. All right. Other than your research and other
4 than the time you spend with patients, what else do you
5 do in your teaching-related activities?

6 A. I teach a medical school course called an
7 affinity group.

8 Q. All right. What else do you do?

9 A. I give lectures in occupational and
10 environmental medicine in the department of family
11 medicine.

12 Q. All right. Any other general --

13 A. I give --

14 Q. Go ahead.

15 A. I sponsor lectures on campus. I participate
16 as a faculty member on the curriculum committee in the
17 department of bio-community health. I advise
18 students -- I have several students who I advise on
19 honors or senior theses.

20 Q. Okay. Are you --

21 A. I'm not done with my answer. I participate in
22 faculty -- other faculty administered proceedings in
23 the department of bio-community health. I assist in
24 counseling students in general, but specifically with
25 respect to the Brown Toogaloo programs.

0077

1 Q. Okay.

2 A. I'm not done yet. Let me think.

3 Q. You've given me a cross section of what you
4 do.

5 A. Excuse me.

6 Q. I apologize if my question was unclear. I
7 don't need a list of everything you do for your
8 teaching.

9 MR. TAYLOR: Objection, please don't
10 interrupt his answer.

11 Q. I'm going to move on to another question. Do
12 you have any board --

13 A. Excuse me, I'm not done with the last answer.
14 If you would like to withdraw the question, that's
15 fine. If the question is what do I do -- what else do
16 I do, which is what the question was, I think I have
17 the right to answer that question completely. Not only
18 do I have the right, I swore at the beginning of this
19 deposition to tell the whole truth, not the part that
20 you thought you wanted to hear as I recall. I don't
21 recall that as being part of what I swore in. Now, if
22 you want to change the oath at the beginning to I will

23 limit my answers to the answers that the attorney
24 asking them wants to hear or thinks he or she asked
25 about, I'll be glad to change all of my answers and
0078

1 stop answering that question. But as long as I took an
2 oath telling me that I was swearing that I was going to
3 tell the truth, the whole truth and nothing but the
4 truth, I would like the right to answer questions. And
5 if you, as in this case, think you misasked a question,
6 feel free to withdraw it.

7 MS. NETTLE: I'm going to object to the
8 sidebar and the nonresponsive statements.

9 Q. Doctor --

10 A. Now, can I finish my answer?

11 Q. I will withdraw the question as I stated it --

12 A. Thank you.

13 Q. -- and you don't need to continue answering.

14 A. Thank you.

15 Q. Do you hold any board certifications? Are you
16 board certified in any areas?

17 A. Yes.

18 Q. What area or areas?

19 A. Internal medicine and preventative
20 occupational medicine.

21 Q. Are you a radiologist?

22 A. I'm not a board certified radiologist, but I
23 do read X rays or have read X rays both in my clinical
24 practice and in my teaching in family medicine.

25 Q. Are you a board certified pulmonologist?

0079

1 A. I am not a board certified pulmonologist.

2 Q. Are you a board certified pathologist?

3 A. I am not a board certified pathologist.

4 Q. Are you an oncologist?

5 A. I am not a board certified oncologist. But I
6 have treated patients with cancer and continue to do so
7 as I supervise residents in the family medicine program
8 and do teach about cancer treatment in the medical
9 school.

10 Q. Have you specialized in any of your training
11 in oncology? Was any of your medical training and
12 education to specialize in oncology? Do you hold
13 yourself -- I'll withdraw that question.

14 Do you hold yourself out to the public as
15 an oncologist?

16 A. Not in general, but certainly in certain
17 specified areas, yes.

18 Q. But as you stated, you're not board certified
19 in oncology?

20 A. That's correct.

21 Q. Have you ever been the primary physician or
22 treater for a patient with mesothelioma?

23 A. Yes.

24 Q. How many times?

25 A. Probably four.

0080

1 Q. When were those times?

2 A. First time was in 1984 and 1985.

3 Q. And did this -- how did you come in contact
4 with this person? Was this someone you were treating
5 at the hospital or did they come to a private practice
6 you had?

7 A. Which question would you like me to answer?
8 There's two questions pending on the floor, how did you
9 do it and then you followed up with a specific question
10 that gave me two alternatives.

11 Q. I was trying to give you an example --

12 A. Which one of those two questions would you
13 like me to answer first?

14 Q. I was trying to give you an example of what I
15 was getting at, but I will ask you to answer the
16 question, how did you come in contact with the first
17 patient that had mesothelioma that you were the primary
18 treater for?

19 A. He made an appointment at my office.

20 Q. Did you diagnose his mesothelioma?

21 A. No.

22 Q. Had he already been diagnosed with
23 mesothelioma at that time?

24 A. I don't recall.

25 Q. Did you refer him to any specialists for

0081

1 treatment?

2 A. For what?

3 Q. For treatment.

4 A. No.

5 Q. Did you refer him to any specialist for
6 diagnosis?

7 A. I don't recall whether he had been diagnosed;
8 therefore, I do not recall whether I referred him for a
9 diagnostic testing.

10 Q. Of the four patients you have been the primary
11 treater for with mesothelioma, is it your general
12 practice to refer them to a specialist such as an
13 oncologist or other type for treatment?

14 A. No.

15 Q. Do you do the primary treatment such as
16 ordering any chemotherapy or radiation treatments for
17 those patients?

18 A. It assumes a predicate that's incorrect. I
19 cannot adopt the predicate so I can't answer the
20 question without being misleading.

21 Q. Do you order any chemotherapy or radiation
22 treatment for the -- did you, for any of the four
23 patients that had meso that you treated?

24 A. I think for one.

25 Q. Were you working with any other doctors to
0082

1 treat these patients?

2 A. Yes.

3 Q. What type of doctors?

4 A. Radiation oncologist, chemo -- an oncologist
5 who does chemotherapy, an acupuncturist who is not a
6 physician and a priest who was, I believe, a doctor but
7 a Ph.D.

8 Q. Have you ever diagnosed a patient with
9 mesothelioma?

10 A. Yes.

11 Q. How many times?

12 A. Many times.

13 Q. And do you have -- I know you said you're not
14 board certified in pathology. Do you have any training
15 in pathology specifically that you believe allows you
16 to diagnose mesothelioma?

17 A. Yes.

18 Q. What is that?

19 A. I was trained in medical school in pathology,
20 I did rotations in pathology in my residency. I would,
21 with my own patients, frequently review pathologic

22 slides. I've spent a lot of time reading and
23 discussing the interpretation of pathology with respect
24 to mesothelioma with pathologists -- practicing
25 pathologists and others.

0083

1 Q. In those cases where you diagnosed
2 mesothelioma, did you actually look at the slides to
3 make the diagnosis, or the tissue?

4 A. No.

5 Q. How did you make your diagnosis?

6 A. Took a history. If the patient was alive, I
7 did a physical exam. I reviewed the medical records.
8 I reviewed the workplace records, coworker records,
9 coworker depositions, conversations with spouses and
10 children. I evaluated the possible alternative
11 diagnoses and other exposures that may have caused or
12 cause mesothelioma. Did a differential diagnosis
13 either explicitly or implicitly. Reviewed the medical
14 literature on general causation related to the types of
15 exposures and reviewed the medical literature on
16 specific causation that applied to that individual. In
17 some cases, discussed the analysis of the pathologic
18 material with the pathologist who had either prepared
19 the material or done the previous readings or -- and/or
20 discussed it with other pathologists who hadn't seen
21 the material. That's basically what I would do.

22 Q. Were all of your diagnoses done in connection
23 with asbestos-related litigation?

24 A. No.

25 Q. Have you ever made any diagnosis of

0084

1 mesothelioma that was not in connection with an
2 asbestos-related legal consultation?

3 A. Before or after? If I diagnosed the
4 mesothelioma, there was generally litigation after. I
5 presume your question means before I diagnosed
6 mesothelioma; is that correct?

7 Q. I'm asking you if you've ever diagnosed
8 mesothelioma in a situation where you had not been
9 retained in asbestos-related litigation pertaining to
10 that patient?

11 A. Yes.

12 Q. How many times?

13 A. Those are the three or four cases that I
14 mentioned before.

15 Q. I believe earlier --

16 A. But I was retained in those cases after the
17 diagnosis was made.

18 Q. So in each of the three of four cases where
19 you treated the patient, you also diagnosed the
20 patient?

21 A. No, not necessarily, some of them may have
22 come to me with a diagnosis already, but I would
23 reevaluate the diagnosis and come to my own conclusion.
24 So the answer would be both.

25 Q. And in the three or four times that you've
0085

1 mentioned, did you follow the methodology you just
2 described at length in making your diagnosis?

3 A. To the extent it was possible or necessary.

4 Q. Have you ever treated Marty Mitchell?

5 A. No.

6 Q. Have you ever met Marty Mitchell?

7 A. No.

8 Q. Have you ever spoken to him?

9 A. No.

10 Q. Are you a certified industrial hygienist?

11 A. No.

12 Q. You are not a toxicologist, correct?

13 A. Not a board certified toxicologist, but I do
14 do things that board certified toxicologists would do.

15 Q. You don't have a degree in toxicology?

16 A. Correct.

17 Q. Do you consider yourself an epidemiologist?

18 A. Yes.

19 Q. Is there such a thing as board certified in
20 epidemiology?

21 A. Not that I'm aware of.

22 Q. Have you reviewed your designation in this
23 case as to what you will testify regarding?

24 A. Not specifically, but I've reviewed other
25 designations from the Kaeske firm and generally request
0086

1 that they send me any changes if they made any.

2 Q. So you have not reviewed the specific one in
3 this case?

4 A. Correct, but I'm assuming -- it could be a
5 false assumption -- that it hasn't changed from the
6 previous designation which I did review.

7 Q. Are you aware that there's no mention of
8 Elliott in the designation of what you will testify to?

9 A. There wasn't in the one that I reviewed prior
10 to this case, so that wouldn't surprise me.

11 Q. Are you aware the only defendant specifically
12 referenced in your designation is Owens Corning
13 Corporation?

14 A. No, but that wouldn't surprise me since
15 they're bankrupt and obviously not part of the case.
16 That would be par for the quality of work I would
17 expect from this firm.

18 Q. Is it generally your practice not to give
19 testimony about companies that have gone bankrupt at
20 trial?

21 A. No, generally I give a lot of testimony about
22 companies that are bankrupt at trial.

23 Q. Have you tried -- have you done --

24 A. But generally the plaintiffs don't list them
25 as the sole defendant in the pleading.

0087

1 Q. Have you done anything in this case to
2 estimate the fiber release Marty Mitchell received from
3 any particular product?

4 A. Sure.

5 Q. What have you done?

6 A. I've reviewed literature on exposures to
7 asbestos products and fiber release from those
8 products. I reviewed Dr. Langer's report saying that
9 working around Elliott turbines was innocuous. I found
10 that quite illuminating.

11 Q. And --

12 A. And I've reviewed, for example, the studies of
13 Balzer conducted for Pittsburgh Corning Corporation
14 that specifically evaluated exposures around particular
15 pipe coverings. I've reviewed Johns-Manville secret
16 studies on the same. I've reviewed the Peele studies
17 on the same. I've reviewed the Bonsib studies on the
18 same. I've reviewed the Fleischer Drinker study on the
19 same. I've reviewed a variety of reports conducted by
20 Bill Longo and others on exposures around a variety of

21 products that were kept on turbines. I reviewed the
22 studies from the Dreessen report on exposures around
23 these products. I've reviewed Navy studies published
24 and unpublished on exposures around the products used
25 on the Elliott turbines. But I haven't reviewed any
0088

1 Elliott studies on exposure of asbestos from their use
2 of their turbines. I must have missed those.

3 MS. NETTLE: Objection, nonresponsive.

4 Q. Do you have any estimates of fiber release to
5 Marty Mitchell specifically for any product in this
6 case?

7 A. Sure.

8 Q. All right. Which product or products?

9 A. Why don't you just pass me back that pile and
10 we'll go through them? Would you pass me that pile?

11 Q. I don't want to go through this pile. I want
12 you to name for me the product or products you have
13 done an estimate of fiber release that Marty Mitchell
14 claims he was exposed from.

15 A. I need that pile to answer this question. And
16 that pile is my pile of documents, and I think I get to
17 keep them. So could you pass those over here --

18 Q. I'll withdraw the question as it's worded, and
19 I'll ask a different question.

20 What products does Marty Mitchell claim
21 he was exposed to asbestos from?

22 A. Oh, with respect to Elliott?

23 Q. No. What products does Marty Mitchell claim
24 he was exposed to asbestos from?

25 A. I'd have to look at his deposition to remember
0089

1 them all.

2 Q. You don't know any products that Marty
3 Mitchell claims he was exposed to asbestos from?

4 A. Well, he claims he worked around Elliott
5 turbines. When he worked around Elliott turbines, he
6 worked around the products that Elliott specified go on
7 their turbines, which are in that stack, including
8 thermobestos, marinite board, asbestos cement board, a
9 variety of other pipe coverings and cements.

10 MS. NETTLE: Objection, nonresponsive.

11 Q. Can you name for me any other product that

12 Marty Mitchell alleges he worked around other than
13 Elliott turbines?

14 A. Yes.

15 Q. What?

16 A. I need to look at his deposition. I wouldn't
17 want to make a mistake.

18 Q. I'm asking from your memory, as you sit here
19 today, what do you recall that he worked around other
20 than Elliott turbines?

21 A. Well, last time I looked at the rules, I was
22 allowed to refer to notes. And it was not like an MCAT
23 test where you've got to, like, do it without notes, so
24 I think I want to refer to the notes so I don't make a
25 mistake.

0090

1 Q. Doctor, when I can read the deposition myself,
2 I don't want you to go through the deposition and read
3 every product. I'm entitled to know what your
4 knowledge is as you sit here today. And I'd like to
5 know what you recall of the products that Marty
6 Mitchell was exposed to other than Elliott turbines.
7 Can you answer that question?

8 A. Sure.

9 Q. What is your answer?

10 THE WITNESS: Let me see the deposition.

11 Q. I'd like you to answer without looking at the
12 deposition.

13 THE WITNESS: Get the deposition.

14 Q. Can you not answer my question without looking
15 at the deposition?

16 A. No, I can answer your question without looking
17 at the deposition.

18 Q. All right. Then do so.

19 A. I'm not gonna because it wouldn't be the best
20 answer.

21 Q. Are you refusing --

22 A. It would not comport with the oath that I
23 took --

24 Q. Are you refusing to answer the question?

25 A. -- at the beginning -- Can I finish my answer,

0091

1 please? Will you stop interrupting my answers, please?

2 It would not comport with the oath that I

3 took at the beginning of this deposition.

4 MS. NETTLE: I'm going to object to the
5 nonresponsive portion and the sidebar.

6 Q. Are you refusing to answer my question as to
7 your knowledge, without looking at the deposition, as
8 to what products you recall Mr. Mitchell was exposed to
9 other than Elliott turbines? Are you refusing to
10 answer that question?

11 (Dr. Egilman and Mr. Taylor confer.)

12 Q. Sir, you're looking through the deposition at
13 the moment. Are you refusing to answer my question
14 without looking at the deposition?

15 MR. TAYLOR: Objection, you're
16 interrupting his answer. He's attempting to answer the
17 question that's been --

18 MS. NETTLE: He hasn't answered my
19 question.

20 MR. TAYLOR: That's a different question
21 than the one that he's attempting to answer.

22 MS. NETTLE: Let the record reflect that
23 the witness is paging through the deposition of Marty
24 Mitchell before answering my question.

25 Q. Dr. Egilman?

0092

1 MS. NETTLE: I want the record to reflect
2 that the witness is refusing to answer my question.

3 Q. All right. I will withdraw the last question
4 on the record, whatever that may be. And I want to ask
5 you, Dr. Egilman, can you tell me what products Marty
6 Mitchell was exposed to other than Elliott turbines
7 without looking at his deposition? Yes or no?

8 A. I can't answer that question yes or no without
9 being misleading.

10 Q. I want you to name for me the products you
11 recall that he was exposed to without looking at the
12 deposition; will you do that? Dr. Egilman?

13 Okay. Are you going to continue to
14 refuse to answer my questions? Because if you're going
15 to do so, we're going to have to call this deposition,
16 and I'm going to move to strike you as a witness. So
17 are you going to continue to refuse to answer my
18 questions? Yes or no?

19 A. I haven't refused to answer any questions.

20 Q. Sir, answer my question then.

21 THE WITNESS: Will you read the last
22 question, please?

23 (Requested portion was read.)

24 Q. Dr. Egilman, I'll ask you one more time.

25 You're continuing to go through this deposition. And I
0093

1 want to know from your recollection do you know of any
2 other products Marty Mitchell was exposed to other than
3 Elliott turbines?

4 A. Yes.

5 Q. What are they?

6 A. Drywall and roofing.

7 Q. And you're getting that from looking at the
8 deposition, correct? Did you just read those products
9 in the deposition?

10 A. Excuse me, you interrupted my answer again.
11 That's not the only product. Can I finish my answer?

12 Q. You're not answering my question, you're
13 continuing to look at the deposition. And my question
14 specifically states I want your knowledge as you sit
15 here today --

16 A. Excuse me.

17 Q. -- without looking at the deposition.

18 THE WITNESS: Can we get the judge on the
19 phone, please?

20 MR. TAYLOR: Sure.

21 THE WITNESS: Let's certify the last
22 question and interruption and get the judge on the
23 phone.

24 MS. NETTLE: I'm going to object to the
25 sidebar statements.

0094

1 MR. TAYLOR: Let's take a break.

2 (A break was taken from 12:22 to 12:31.)

3 Q. (BY MS. NETTLE.) Before I ask you a
4 question --

5 MS. NETTLE: What do you want to do about
6 lunch, Mr. Taylor?

7 THE WITNESS: There isn't any lunch.

8 MS. NETTLE: We have a pregnant court
9 reporter --

10 THE WITNESS: It's not up to Mr. Taylor.

11 MS. NETTLE: -- and I'm asking Mr.

12 Taylor.

13 THE WITNESS: Then get another court
14 reporter because I have to leave at 4:00 and you have a
15 six-hour time limit.

16 MS. NETTLE: Mr. Taylor, what's your
17 preference on lunch?

18 MR. TAYLOR: My preference would be to go
19 through lunch.

20 MS. NETTLE: In about 15 minutes, I want
21 to take kind of a 15-minute break just to get a snack
22 but then that's fine.

23 THE WITNESS: That's not fine if it comes
24 out of my time. If it comes out of your time, that's
25 fine. I'm prepared to go forward. And I'm prepared to
0095

1 take a break for the court reporter to get relief, if
2 that's what's necessary.

3 Can you do that? Okay, so why don't we
4 take a break and let the court reporter call for
5 relief --

6 THE REPORTER: I'm sorry, I was confused
7 about what you meant by relief.

8 THE WITNESS: Can the court reporter call
9 someone to -- to relieve you?

10 MS. NETTLE: I'm going to object to the
11 sidebar. There's no question pending.

12 THE WITNESS: Well, you can object all
13 you want. I'm concerned about the court reporter
14 having been informed about a possible health problem
15 for her, and I want to make sure that that doesn't
16 interfere with her health or this deposition.

17 MS. NETTLE: Yes. Which is why I asked
18 about a lunch break.

19 THE WITNESS: And I said because of the
20 time -- because you refused to start earlier and you
21 have six hours, I have my own time concerns. In order
22 to make it a win/win for everybody, I would like to
23 take a break and see if the court reporter can get a
24 replacement court reporter in so that we can go forward
25 and you can get your time and she can have her health.

0096

1 MS. NETTLE: Sir, we're not taking a

2 break for that, I don't agree to have another court

3 reporter come in --

4 THE WITNESS: Okay.

5 Q. -- and I will now ask my questions. Can you

6 testify --

7 A. Excuse me. I'm not going to allow that. That

8 is -- to put the court reporter's health in jeopardy is

9 not something I'm going to allow to happen. So I want

10 the judge called about that if you're not going to

11 allow a break so the court reporter can have a

12 substitute court reporter come in.

13 MS. NETTLE: I'm going to object to the

14 sidebar. I think it's clear I was asking for a lunch

15 break. So Mr. Taylor, is it your preference to have a

16 lunch break or not have a lunch break? That's all I'm

17 going to ask. I'm not getting into all the other --

18 MR. TAYLOR: We don't want a lunch break.

19 MS. NETTLE: Okay.

20 MR. TAYLOR: But Dr. Egilman has concerns

21 that I think have been raised and they should be

22 addressed and I think we should take a break.

23 MR. SCUDDER: Let's take a lunch break.

24 MR. TAYLOR: Not a lunch break. A break

25 to call and see if we can get another reporter in here.

0097

1 MS. NETTLE: I don't agree to have

2 another court reporter. I will agree to a lunch break

3 if one is needed. If the court reporter doesn't want a

4 lunch break, that's fine too.

5 THE WITNESS: Then get her to agree to

6 waive her time.

7 MR. TAYLOR: If we can come to an

8 agreement on the ending time of the deposition, we can

9 take whatever breaks you want.

10 MS. NETTLE: I'm not going to agree that

11 lunch time for everyone counts against our time to

12 depose Dr. Egilman.

13 MR. TAYLOR: Well, then I don't see how

14 we have an option and we can -- let's go off the

15 record.

16 (A break was taken from 12:34 to 12:43.)

17 MS. NETTLE: Over the break we've

18 established -- and I would like the court reporter to

19 confirm -- are you comfortable going forward at this
20 point?

21 THE REPORTER: Yes.

22 MS. NETTLE: And will you let us know at
23 any time if you feel like you need a break?

24 THE REPORTER: Yes.

25 MS. NETTLE: Thank you.

0098

1 THE REPORTER: Thank you.

2 Q. (BY MS. NETTLE.) Dr. Egilman, can you
3 testify -- can you tell me without looking at the
4 deposition of Marty Mitchell any product he worked
5 around other than Elliott turbines?

6 A. Yes.

7 Q. What are those products?

8 A. Turbines by other manufactures, cements,
9 refractories, drywall. That's an incomplete list
10 without looking at my notes and the deposition.

11 Q. And since the first time I asked that
12 question, you began paging through the deposition, is
13 that correct, and starting to review it?

14 A. That's correct.

15 Q. Have you done any testing on Elliott turbines?

16 A. No.

17 Q. Have you reviewed any testing done on Elliott
18 turbines?

19 A. Yes.

20 Q. Give me the name of each test you've reviewed
21 that was done on an Elliott turbine.

22 A. They're all in front of you in that stack or
23 in that stack.

24 MS. NETTLE: Objection, nonresponsive.

25 Q. Give me the name of each test that you

0099

1 reviewed that was done specifically on an Elliott
2 turbine.

3 A. Well, then pass me the stack, please.

4 Q. And the stack I'm handing you is Exhibit 11
5 which was provided to you by Baron & Budd.

6 MS. NETTLE: Mr. Taylor, will you agree
7 to go off the record while Dr. Egilman --

8 MR. TAYLOR: No, we will not. No.

9 Q. Dr. Egilman, is it your intention to go

10 through every page of that stack?

11 A. I have no intention at the present time. I'm
12 intending to answer your question one at a time.

13 MS. NETTLE: Objection, nonresponsive.

14 Will you note the time he started
15 reviewing the documents?

16 THE REPORTER: Okay.

17 (Dr. Egilman and Mr. Taylor confer.)

18 A. There is a test report on exposures to
19 gaskets, and I'm looking for that one, amongst others.

20 THE WITNESS: Pass that to Ivan, please.

21 (Dr. Egilman and Mr. Taylor confer.)

22 A. This is the test report on temperatures and
23 pressures on turbines.

24 Q. What -- can you hand me that document?

25 A. (Witness complies.)

0100

1 Q. And Dr. Egilman, while you're still looking,
2 would you agree the document you identified is Bates
3 stamped ET 373 from the stack Baron & Budd gave you,
4 down at the bottom?

5 A. No.

6 Q. Down here?

7 A. I said no.

8 Q. Okay. What is it Bates stamped?

9 A. There are two Bates stamps on this -- well,
10 there's one exhibit stamp and one Bates stamp. The
11 Bates stamp is ET-00373; the exhibit sticker -- one
12 exhibit sticker says ET 57 and the other one says 24.

13 Q. And that's the document you're referring to as
14 a report on temperatures and pressures on turbines?

15 A. Testing for, correct. This is the gasket
16 testing report to Elliott company.

17 Q. Did this document come from the same stack
18 from Baron & Budd? I don't have the exhibit number in
19 front of me.

20 A. I don't know what stack it came from.

21 Q. I believe you split that pile and gave some to
22 him, so...

23 A. It came from Exhibit 11.

24 Q. And it's not Bates numbered, so I just want to
25 ask you so we can identify the document. Is it a

0101

1 January 22nd, 1974 letter to Elliott from Industrial
2 Gasket and Shim Company?

3 A. I can't see it from here.

4 Q. There you go.

5 A. Do you want me to identify this document?

6 Q. I asked if it was a January 22nd letter from
7 Industrial Gasket and Shim to Elliott.

8 A. It is. It has Bates numbers at the bottom
9 that are cut off.

10 MS. NETTLE: Mr. Taylor, do you have any
11 objection to pulling these out and labeling them
12 separate exhibits and put the statement on the record
13 that they originally came from Exhibit 11?

14 MR. TAYLOR: That's fine.

15 MS. NETTLE: We'll mark the Bates number
16 ET 373 as the next exhibit which is 16. And the letter
17 that Dr. Egilman referred to will be Exhibit 17.

18 Q. You've handed me another sheet of paper. Is
19 this another test that you're referring to,
20 Dr. Egilman?

21 A. Correct.

22 Q. Is this Bates stamped ET 000110 for
23 clarification down at the bottom?

24 A. It's ET 000110.

25 If you're not going to mark them, will
0102

1 you put them back in the pile that I'm putting up here
2 to answer the question, please?

3 Q. I'm going to mark them. I was just waiting
4 until you were done. I thought it might go quicker
5 that way.

6 (Dr. Egilman and Mr. Taylor confer.)

7 Q. Doctor, you pulled this -- did you intend to
8 pull that as well as the next after the pink sheet,
9 just for clarification?

10 A. I can't see --

11 Q. I didn't know if you intended to pull both or
12 just the Johns-Manville document.

13 A. This is a report on tests. This is tests.
14 Okay. I think that's it.

15 (Dr. Egilman and Mr. Taylor confer.)

16 THE WITNESS: I'm sure it talks about
17 tests. We can start with the others until you read

18 that.

19 A. Just to be clear, this -- which we should
20 probably mark separately -- did not come out of that
21 stack. It came out of a different stack with different
22 types of Bates numbers.

23 THE WITNESS: So do you want to mark this
24 separately or do you want to mark the whole stack?

25 MR. TAYLOR: I think we should -- you
0103

1 might want to mark that separately, and then if she
2 wants to mark this additional stack... Based on my
3 review of that -- I thought this was a duplicate of
4 what was in there, but I believe this part is not
5 duplicated, and this is additional documents.

6 MS. NETTLE: Do you know where that came
7 from?

8 MR. TAYLOR: I think the same part of the
9 Baron & Budd documents.

10 MS. NETTLE: Because it's got different
11 colored paper. I didn't know if that was --

12 MR. TAYLOR: And I thought that was a
13 second set of the same thing that had the pink sheets,
14 but I don't see -- in flipping through those, I didn't
15 see anything that was fold-out drawings like these.

16 THE WITNESS: This is completely
17 different.

18 MR. TAYLOR: So I believe this is a
19 completely different set.

20 A. Let's do the last test document first. This
21 comes from documents that have not previously been
22 marked at the deposition. It's titled Woodward
23 Bulletin, Bellows Direct Type Speed Setting Mechanism
24 and it goes from Bates numbers -- it's a different set
25 of Bates numbers -- 36610 C. That's it. There's no
0104

1 Bates numbering after that. It's a --

2 MR. TAYLOR: Bulletin number.

3 A. Yeah, it's a bulletin number, but that's also
4 a Bates number. And it's got 12 pages.

5 Q. All right. This will be marked as 18, the
6 document that you've described, and it came from a
7 stack which I would like to mark as 19, the entire
8 stack if we have another rubber band.

9 And that will be Exhibit 19. Where did

10 Exhibit 19 come from?

11 A. From that box.

12 Q. Who provided the documents in Exhibit 19 to
13 you?

14 A. Mr. Taylor.

15 Q. Are all those documents provided to you by
16 Mr. Taylor?

17 A. As far as I know.

18 Q. All right. And Exhibit 18 came out of exhibit
19 19, just so we're clear?

20 A. Correct.

21 Q. Let's see, you have pulled a number of other
22 documents from Exhibit 11, and I just want to clarify
23 them. Exhibit 16 appears to be -- the title is cut
24 off, but it looks like it says "order record" and the
25 user says Oklahoma A&M College; is that correct?

0105

1 A. That's correct.

2 Q. And what part of that document is a test of an
3 Elliott Turbine?

4 A. This temperature marking where it says super
5 heat parts with 600 degrees is checked where it says
6 hand speed changer, yes, plus or minus five percent.
7 Where it says mount purchase is half coupling and it
8 says no. Insulation and lagging says yes.

9 Q. What type of --

10 A. HV setting it says closed for 43 horsepower.

11 Q. What type of test was done that's reflected in
12 that document?

13 A. Super heat parts is a temperature check. Hand
14 speed changer was to check the speed of the changer,
15 whether it was a correct speed. The couplings issue
16 was whether the couplings were present, they tested to
17 see whether they were present or not. They also
18 checked to see whether the sole plate was present or
19 not. They checked to see what kind of a steamed
20 strainer was present, it was a standard not specified.
21 And they checked the -- the HV setting and determined
22 that it was closed for 43 horsepower.

23 Q. Is there any testing reflected in that
24 document about whether there's asbestos on the turbine
25 that was tested?

0106

1 A. Yes.

2 Q. What is that?

3 A. It says insulation and lagging, yes.

4 Q. Does it state whether or not that insulation
5 and lagging had asbestos?

6 A. Specifically, no, not on this document; that's
7 on other documents that relate to this document.

8 Q. So is it your testimony then that the
9 insulation on this turbine reflected in here had
10 asbestos in it?

11 A. Right.

12 Q. Do you know if Marty Mitchell ever worked at
13 Oklahoma A&M College in Stillwater Oklahoma?

14 A. I don't recall.

15 Q. Is there any testing on here that reflects
16 what the fiber release, if any, would be from this
17 specific turbine?

18 A. Oh, no, Elliott didn't do any test like that.

19 MS. NETTLE: Object to the nonresponsive
20 portion.

21 Q. Is there anything in here that reflects what
22 the fiber release was from this particular turbine?

23 A. On that document?

24 Q. Uh-huh.

25 A. No. Just to speed it up, Elliott never did

0107

1 any tests like that on any of its asbestos.

2 MS. NETTLE: Object to nonresponsive
3 portion.

4 Q. The next document that we've marked as Exhibit
5 17, it's a letter that we talked about from Industrial
6 Gasket; is there anything in this document that
7 indicates what the fiber release would be from an
8 Elliott turbine?

9 A. Yes.

10 Q. What is that?

11 A. Well, at least from this part of a fiber
12 release.

13 Q. What in there are you relying on to state that
14 there may have been fiber release from an Elliott
15 turbine?

16 A. Nothing.

17 Q. Okay.

18 A. Well, that's not correct. The description of
19 the product.

20 Q. So there's no test results in there pertaining
21 to fiber release?

22 A. That's correct.

23 Q. And you haven't done any tests to determine
24 what the fiber release may have been from an Elliott
25 Turbine, correct?

0108

1 A. On an Elliott turbine, no. I've done --
2 that's correct.

3 Q. This next set of documents is ET 110 through
4 111 A; and I think there's a duplicate of 111 A that
5 was in the stack twice. And they all appear to be a
6 turbine service report from Oklahoma A&M College; is
7 that correct?

8 A. That's correct.

9 Q. Is there any test result in that document --
10 which by the way I want to mark as the next exhibit, I
11 think it's 20.

12 Are there any test results in that
13 document that indicate what the fiber release may have
14 been from that Elliott turbine?

15 A. Why don't I wait until the court reporter
16 marks it; she can't mark and type at the same time.

17 Q. That's fine.

18 A. And I'm just going to write on this exhibit ID
19 number five pages so it's clear it goes 110 -- it looks
20 like there's two copies of 111 A.

21 Q. Would you like the --

22 A. Four pages actually, four pages.

23 Q. Would you like the court reporter to read back
24 my question?

25 A. No. No.

0109

1 Q. The next document is ET 312, it's entitled
2 Elliott Company Engineering Department Record
3 Descriptive Specifications for turbines. Is there any
4 test results on there pertaining to asbestos?

5 A. No.

6 Q. I would like to mark that as Exhibit 21.

7 The next document is ET 327 entitled

8 Material Specification. I would like to mark that as
9 the next exhibit, 22.

10 A. Oh, this is a mistake, this is just
11 specifications, no testing on this.

12 Q. All right. Would you -- well, that's fine.
13 Is it your testimony there's no test results on this
14 document?

15 A. That's correct.

16 Q. The next document is ET 329, the top is cut
17 off on this copy, but it appears to be a sheet about
18 Garlock Sheet Gasketing. And we can mark it as Exhibit
19 23.

20 Are there any test results on there
21 pertaining to asbestos?

22 A. Yes.

23 Q. And what tests were done -- the results
24 reflect -- reflected in that document?

25 A. Tensile strength, weight, thickness.

0110

1 Q. Anything else?

2 A. That's it.

3 Q. No testing about fiber release in this
4 document?

5 A. Correct.

6 Q. Do you know whether the turbines that
7 Mr. Mitchell claims he worked around had any Garlock
8 sheet gasketing?

9 A. Nope.

10 Q. Next document Exhibit 24, is a material
11 specification sheet, are there any test results
12 concerning asbestos in that document?

13 A. Test results?

14 Q. Uh-huh.

15 A. No.

16 Q. All right. The next document -- the top says
17 J.C. Style 2150 Compressed Asbestos Sheet Packing, I'll
18 mark it as Exhibit 25. Are there any test results in
19 that document concerning asbestos?

20 A. Yes.

21 Q. What test results?

22 A. It has been tested at temperatures up to 700
23 degrees Fahrenheit and at pressures up to 400 psi.

24 Q. And what has been tested?

25 A. Style 2150 is composed of approximately 80

0111

1 percent chrysotile asbestos fibers, 12 and a half

2 percent G.R.S. synthetic rubber and special curing

3 compounds.

4 Q. Do you know what product specifically that's

5 referring to?

6 A. Yes.

7 Q. What?

8 A. J.C. Style 2510 Compressed Asbestos Sheet

9 Packing.

10 Q. Do you know who made that product, can you

11 tell from the document?

12 A. No.

13 Q. Do you know if that product was used on any of

14 the turbines Mr. Mitchell claims to have worked around?

15 A. No.

16 Q. Is there any test in that document or referred

17 to in that document concerning fiber release?

18 A. No.

19 Q. Can I have that back, please.

20 The next document is a third copy of ET

21 111 A, do you have an objection to not marking it?

22 A. Yeah, if you're going to refer to a document,

23 I think it should be marked.

24 MS. NETTLE: Okay, next exhibit.

25 Q. Is this a third copy of Exhibit 111 A or Bates

0112

1 stamp number 111 A?

2 A. I don't know how many copies there are.

3 Q. Is it an additional copy of the document we've

4 already talked about?

5 A. I don't know.

6 Q. Exhibit 20. Is that a duplicate copy of a

7 page in Exhibit 20?

8 A. It appears to be.

9 Q. The next document we'll mark as Exhibit 27.

10 This is Bates labeled ET 32 to ET 105; is that correct?

11 A. No.

12 Q. How is that incorrect?

13 A. Some of the pages have no Bates numbers on

14 them.

15 Q. All right. Did I correctly describe the first

16 and last Bates stamp pages, just for purposes of
17 identification?

18 A. I don't know why you did it, but the first and
19 last Bates stamp pages are the ones that you mentioned.

20 Q. All right. What is that document generally,
21 if you know?

22 A. It's titled Johns-Manville Insulation Product
23 Information.

24 Q. Do you know whether the turbines Mr. Mitchell
25 claims to have worked around had any Johns-Manville
0113

1 insulation on them?

2 A. No.

3 Q. Is there any test result or testing discussed
4 in that document pertaining to asbestos?

5 A. Yes.

6 Q. Where?

7 A. Refers to quality control tests done on page 1
8 of the document ET 000034. It refers to strength,
9 weight, chemical, water, applicability, conductivity
10 tests on pages 2 and 3 of the same document. Those are
11 the document numbers not the Bates numbers. It talks
12 about sizes and measurements on page 4. It talks about
13 temperature tests, page 5. It talks about comparative
14 financial costs on page 6. It talks about the same
15 tests that I mentioned before on page 6 just for a
16 different product. It talks about composition of the
17 tests -- tests on the composition of the final product
18 of autoclaved pipe covering. It talks about all the
19 tests that I mentioned before again on page 10, plus
20 shrinkage tests and cracking tests.

21 Q. All right. I'll withdraw --

22 A. It talks about --

23 Q. -- the question as I had worded it, and I'll
24 ask you a more specific question. Are there any tests
25 in there that were done on turbines specifically or do
0114

1 all the tests in there pertain to the Johns-Manville
2 products?

3 A. Well, the Johns-Manville products were
4 specified for use on turbines. I consider a turbine to
5 be, as it functions, the metal and included insulation,
6 if that's how they were sold. So it would be

7 misleading for me to answer that there were tests
8 only -- there were tests on parts of the turbine in
9 here, those parts of the turbine are those supplied by
10 Johns-Manville, that's the way I can answer the
11 question.

12 MS. NETTLE: And I'm going to object as
13 nonresponsive.

14 Q. Are there any tests in there specifically
15 pertaining to turbines?

16 A. You mean is the word turbine in here anywhere?

17 Q. Right.

18 A. I have to check.

19 Q. Do you recall seeing the word turbine in there
20 without looking?

21 A. Yes. But I'm not sure.

22 Q. Can you describe for me any of the testing --
23 well, can you tell me whether any of the testing
24 pertained directly to turbines.

25 A. Yes.

0115

1 Q. Which test in there -- let me rephrase. Are
2 there any tests in there that pertain to the fiber
3 release, if any, from a turbine, an Elliott turbine?

4 A. I would have to check. I think there may be
5 one, it depends what year it's from.

6 I answered the question. Do you have
7 another question?

8 Q. Yes. Please tell me the test that you're
9 referring to.

10 (Dr. Egilman and Mr. Taylor confer.)

11 THE REPORTER: Can we take a quick
12 restroom break?

13 THE WITNESS: Sure.

14 MS. NETTLE: Do you agree to go off the
15 record during the restroom break?

16 MR. TAYLOR: For what?

17 MS. NETTLE: For a restroom break.

18 MR. TAYLOR: That's fine.

19 (A break was taken from 1:34 to 1:52.)

20 Q. Sir, before the break you were looking for a
21 test that you thought you recalled pertaining to
22 turbines, did you find that test in the document?

23 A. I don't think that was the question.

24 Q. Did you find the test you were searching for?

25 A. I found one test of fiber release but not the

0116

1 one I was searching for. I have an unredacted one of
2 these documents and I'm having those pages faxed here.

3 Q. Is it your testimony this document is
4 redacted?

5 A. Maybe or maybe substituted or maybe a
6 different document.

7 Q. Do you have any evidence it's been redacted?

8 A. I haven't gone through it yet. It's different
9 from another document similar to it that I've seen in
10 the past.

11 Q. So no, you don't have any evidence this has
12 been redacted?

13 A. Well, I have some evidence because I have
14 another copy of a similar document that has health
15 information in it.

16 Q. Do you know if that document -- you say
17 similar, you don't know whether it's the same one or
18 not?

19 A. That's right, I need to compare them.

20 Q. All right. You have put a sticky note on a
21 page that's ET 000089, J-M Blazecrete Hydraulic Setting
22 Refractory Cement, what on this page pertains to fiber
23 release?

24 A. It's a spray product.

25 MS. NETTLE: Objection, nonresponsive.

0117

1 Q. What on that page refers to fiber release?

2 A. It's a sprayed asbestos product.

3 MS. NETTLE: Objection, nonresponsive.

4 Q. Can you cite to me anything on that page that
5 refers to fiber release?

6 A. Mixed with water at the gun nozzle they are
7 pneumatically projected with great force resulting in a
8 dense homogeneous lining.

9 Q. So based on the fact that it's sprayed you're
10 -- that's the link to fiber release that you're
11 claiming?

12 A. Yes.

13 Q. Are there any test results in this -- on this
14 page pertaining to fiber release?

15 A. I'm not sure I understand the question. Do
16 you mean they measure how much fiber was released when
17 they sprayed it pneumatically at high force?

18 Q. I'm asking --

19 A. Against the wall?

20 Q. I'm --

21 A. The exact number of fibers, is that what
22 you're asking?

23 MS. NETTLE: Objection, nonresponsive.

24 A. I'm just asking for clarification of the
25 question.

0118

1 Q. Is there any place in this document that
2 refers to testing of fiber release of this product,
3 test results, a discussion of testing, anything
4 pertaining to testing --

5 A. It does not use the word test on that page.

6 MS. NETTLE: Objection, nonresponsive.

7 Q. Is there anything pertaining to or referring
8 to testing of fiber release on this page?

9 A. Yes.

10 Q. What?

11 A. What I read before.

12 Q. And how did what you read before pertain to
13 testing?

14 A. Because they tested how fast and how much was
15 sprayed.

16 Q. Who tested?

17 A. Manville, that's what they're describing
18 there.

19 Q. And where are they describing the tests?

20 A. Well, they describe -- they say, "these four
21 refractories are especially adaptable for gun
22 application in building new refractory linings and
23 repairing old ones." I interpret that as a summary of
24 tests that that's based on. Next, "they adhere readily
25 with a minimum of loss when 'shot' in place" -- shot's

0119

1 in quotes -- that also refers to a summary of tests
2 that were done. "Mixed with water at the gun nozzle
3 they are pneumatically projected with great force."
4 Great force is a summary of a test of the amount of
5 force that was measured at some gun nozzle at some

6 point in time, that's the report of the test results.

7 "Resulting in a dense homogeneous lining," that refers
8 to tests of the density and homogeneity of the lining.

9 Next paragraph. They also say that they tested for
10 effectiveness, okay. And that's referred to in the
11 next test result.

12 Q. Have you seen any of the tests you believe are
13 referred to or summarized in this document?

14 A. Sure.

15 Q. Have you -- do you know if this J-M Blazecrete
16 was used on any of Elliott's products?

17 A. I think it was specified to be used, yes.

18 Q. Which product?

19 A. I don't recall, the spec sheets are all here
20 though.

21 Q. But you can't tell me what type of product
22 this J-M Blazecrete -- what type of Elliott product you
23 believe it was used on?

24 A. No.

25 Q. Do you believe it was used on a turbine of
0120

1 some sort?

2 A. I can't recall if it's a turbine or a boiler.

3 Q. Is it your testimony Elliott manufactured
4 boilers?

5 A. Yeah. Started as a boiler company.
6 Cleaning -- actually cleaning company is a boiler
7 company. It started with some patents Mr. Elliott
8 wrote for how to clean boilers.

9 Q. Do you have the tests that you believe are
10 referred to in this document number 89, ET 89 of
11 Exhibit 27?

12 A. In my possession?

13 Q. Yes.

14 A. I may.

15 Q. You don't know one way or the other?

16 A. Well, I don't know for sure one way or the
17 other. I've seen a lot of spray tests. I was a
18 consultant for Manville and Turner & Newall, both
19 manufactures of spray equipment and spray asbestos, and
20 I've seen a lot of tests of spraying. I can't be sure
21 what year that document is, so I can't be sure --
22 there's no date on that document as far as I know, so I

23 can't be sure exactly, because I didn't memorize the
24 documents by year yet, what date that came in therefore
25 what tests might have been referred to in that
0121

1 document. But I might be able to figure it out.

2 Q. Did you go back and review any of the test
3 results you believe are referred to in this document in
4 preparation for your opinions in this case or
5 preparation for this deposition?

6 A. Sure, I've reviewed those in the past.

7 MS. NETTLE: Objection, nonresponsive.

8 Q. Did you go back and review any of the test
9 results you believe are referred to on this page in
10 preparation for this deposition or in preparation for
11 forming your opinions in this case?

12 A. I don't separate my life by those categories.
13 I've reviewed those test results in the past for a
14 variety of purposes, for consulting for those
15 companies, for testifying at the request of companies
16 and at the request of plaintiffs in litigations, for
17 publishing papers. I don't recall under which of those
18 categories my review of those tests occurred nor do I
19 recall when it occurred.

20 Q. In the past couple of weeks since you started
21 looking at Elliott documents, did you go back and
22 review any of those tests?

23 A. Yes.

24 Q. Which ones?

25 A. Spray tests of Turner & Newall products.

0122

1 Q. Do you have those tests with you today?

2 A. No.

3 Q. Why did you go back and look at those in the
4 past two weeks?

5 A. I beg your pardon?

6 Q. Why did you look at those in the past two
7 weeks?

8 A. Because sprays are frequently used on
9 turbines. Because I saw Dr. Langer's report saying
10 working around your turbines were innocuous, and I was
11 incredulous at that.

12 Q. Do you know --

13 A. Because -- I'm not done, you asked a why

14 question. And because I thought that there was a gross
15 misrepresentation of the truth of the matter. So I
16 wanted to make sure I had the evidence that would be
17 able to rebut any such misrepresentation. Now, I'm
18 done.

19 Q. Dr. Langer didn't prepare a report in this
20 case, did he?

21 A. I have no idea.

22 Q. Do you know what the report Dr. Langer
23 prepared pertained to, what case?

24 A. It's on the letter that he wrote. I didn't
25 memorize that either, but the letter is here.

0123

1 Q. Is it your recollection that report did not
2 pertain to Mr. Mitchell's case?

3 A. Correct.

4 Q. Do you know whether any T&N spray products
5 were used on Elliott turbines?

6 A. I think so.

7 Q. And what do you base that opinion on?

8 A. Some AC&S documents.

9 Q. What AC&S document leads you to believe that
10 T&N products were used on Elliott turbines?

11 A. AC&S has a list of customers and boilers
12 sprayed, or many such lists. I've reviewed such lists
13 and I think Elliott's on one of them, but I'm not
14 positive.

15 Q. Can you produce that document for me?

16 A. I can try.

17 Q. Do you have it with you?

18 A. Not right in front of me. You've got
19 everything I brought.

20 Q. And it's not in the documents you've brought
21 that have been marked as exhibits?

22 A. Right.

23 Q. And you can't say one way or the other whether
24 Elliott's on that document, the AC&S document?

25 A. I can't be sure. I think I recall seeing

0124

1 them, I could be wrong, but I'll check.

2 Q. What's the name of that document?

3 A. It doesn't have a name, it's got a list of
4 jobs that AC&S did.

5 Q. Do you have any evidence --

6 A. You have some retired AC&S lawyers, I'll
7 consult with them during the break.

8 Q. Do you have any evidence that AC&S ever
9 installed or sold to Elliott? Ever installed an
10 Elliott turbine or sold to Elliott?

11 A. Not beyond what I just said already.

12 Q. And you don't have, as you sit here today, any
13 fiber release results from the testing you believe is
14 referred to on page 89, correct?

15 A. You mean the documents?

16 Q. The actual testing and the results?

17 A. I don't have the documents, the results I can
18 give you.

19 Q. You don't have any documents reflecting the
20 testing or results?

21 A. Right.

22 Q. This next document, I believe, is either a
23 duplicate or similar to the previous one. I'll mark it
24 as the next exhibit, 28. I'm going to let you compare
25 27 and 28, you don't have to do it in detail, but do

0125

1 they appear from the Bates stamps to be a duplicate of
2 the same document?

3 A. It looks like it.

4 Q. The next document is a group of pages I'll
5 mark as Exhibit 29. This is a Johns-Manville document.
6 The second page says Development of Axial-Flow
7 Supercharger; did I correctly identify that?

8 A. Yep.

9 Q. Are there any test results in that document
10 pertaining to asbestos?

11 MR. TAYLOR: For the record, you gave him
12 all this as one document with this page.

13 MS. NETTLE: Oh, is that not part of the
14 same?

15 MR. TAYLOR: I think that went with the
16 previous Johns-Manville.

17 MS. NETTLE: Oh, the pink page is
18 missing.

19 MR. TAYLOR: That's the back page to it.

20 MS. NETTLE: Can we move then 29 to the
21 other document?

22 THE WITNESS: It's okay with me.

23 A. Yeah, this is a published paper what you gave
24 me. This is not a Manville document; 29 is not a
25 Manville document.

0126

1 Q. All right.

2 A. 29 is a published paper by three people who
3 work for Elliott in Powerfax, winter of 1957.

4 Q. It was incorrectly grouped with a
5 Johns-Manville page, so we've cleared that up.

6 A. Not only that, it was incorrectly researched
7 by my staff.

8 MS. NETTLE: Objection, nonresponsive.

9 No question pending.

10 Q. Can I -- I'll repeat my question --

11 (Dr. Egilman and Mr. Taylor confer.)

12 Q. Is there any testing concerning asbestos in
13 that document?

14 A. Oh, it's an Elliott document, I'm sure there
15 isn't.

16 MS. NETTLE: Objection, nonresponsive.

17 Q. Do you see any testing concerning asbestos in
18 that document?

19 A. No.

20 Q. Exhibit 30 is a document, the top of which
21 says S.O. 7402. Can you tell me what that document is?

22 A. Some repair and testing document on turbine --
23 on a turbine -- or a generator, turbine generator.
24 It's an Elliott document.

25 Q. Is it testing of a specific generator?

0127

1 A. Yes.

2 Q. And do you know if that generator was any
3 machine that Mr. Mitchell worked around?

4 A. No.

5 Q. Is there any testing in there concerning
6 asbestos?

7 A. No.

8 Q. And the last document you presented to me
9 was -- it's already been marked as Exhibit 18, it was
10 taken from a different stack. It's from Woodward
11 Governor Company.

12 A. Yeah.

13 Q. Is there any testing in there concerning
14 asbestos?

15 A. No.

16 Q. Have we now talked about all the documents you
17 have pulled regarding testing on turbines that you
18 reviewed -- testing on Elliott turbines that you
19 reviewed?

20 A. Except for the web site documents.

21 Q. All right. Please show me in the web site
22 documents what refers to testing done on Elliott
23 turbines -- and actually let me clarify. Is there
24 anything in the web site documents that refers to
25 testing done on Elliott turbines pertaining to

0128

1 asbestos?

2 A. No.

3 Q. Okay. Other than the web site documents and
4 this stack Exhibit 16 through 30, are there any other
5 testing -- is there any other document reflecting
6 testing of Elliott turbines that you've reviewed?

7 A. No.

8 Q. So you haven't reviewed any test concerning
9 fiber release on an Elliott turbine, correct?

10 A. No.

11 Q. How is that incorrect -- well, let me withdraw
12 that question. Do any of these documents, the web site
13 pages or this stack, provide information on testing of
14 Elliott turbines and any fibers that may have been
15 released from an Elliott turbine?

16 A. Yes.

17 Q. Which ones?

18 A. The ones that talk about asbestos insulation
19 being used. The ones that talk about spraying asbestos
20 insulation. The ones that describe what asbestos
21 insulation consist of.

22 MS. NETTLE: I'm going to object as
23 nonresponsive.

24 Q. We've gone through each of these and you could
25 not point to me any test results pertaining to fiber

0129

1 release with the exception of this description of the
2 Blazecrete. Is there any other test you can point to
3 concerning fiber release from an Elliott turbine?

4 A. Sure.

5 Q. What?

6 A. Those products are all used on Elliott
7 turbines and there are tests of the use of those
8 products on turbines and in other uses that exist in
9 the literature on other turbines that are substantially
10 similar to Elliott, if not identical to Elliott
11 turbines, on other parts that are substantially similar
12 to using those products on -- or identical to using
13 those products on Elliott turbines, etcetera.

14 MS. NETTLE: Object as nonresponsive.

15 Q. Can you name for me any test you have reviewed
16 that specifically looked at the fiber release from an
17 Elliott Turbine?

18 A. No, I already said Elliott never tested for
19 fiber release from its turbines.

20 MS. NETTLE: Object to the nonresponsive
21 portion.

22 Q. Yes or no, did you review any tests that
23 specifically looked at fiber release from an Elliott
24 turbine?

25 A. No, Elliott never tested its turbines.

0130

1 However, tests of products specified and used on
2 Elliott turbines have been tested during such use and
3 those specify exposure levels and fiber release.

4 MS. NETTLE: Objection, nonresponsive.

5 Q. Have you done any estimate of the fiber
6 release, if any, from any product Mr. Mitchell alleges
7 he worked around?

8 A. Yes.

9 Q. Where are those results or those estimates?

10 A. In a body of literature that I've reviewed in
11 the past.

12 MS. NETTLE: Objection, nonresponsive.

13 Q. Have you personally done any estimates in this
14 case specific to Marty Mitchell and his exposure
15 estimating what fiber release, if any, there was from
16 any of the particular products Marty Mitchell worked
17 with or around?

18 A. Yes.

19 Q. Are those estimates written down anywhere?

20 A. Yes.

21 Q. Where?

22 A. In the documents that review fiber release
23 from the products that were used in and around Elliott
24 turbines when Mr. Mitchell was in and around those
25 turbines.

0131

1 MS. NETTLE: Objection, nonresponsive.

2 Q. What -- you understand that fiber release can
3 be measured in number of fibers per cubic centimeter?

4 A. Are you talking about asbestos fibers?

5 Q. Yes.

6 A. That's a common way that measurements are
7 derived, but it's really meaningless and confusing
8 unless you specify the method of measurement.

9 Q. Have you done any estimates of the fibers per
10 cubic centimeters that Mr. Mitchell was exposed to from
11 any particular product?

12 A. Yes.

13 Q. What are they? How many fibers per cubic
14 centimeter was he exposed to?

15 A. Billions, quadrillions.

16 Q. And what testing did you do to come up with
17 those numbers?

18 A. I reviewed test results from exposures to the
19 products used on Elliott turbines. I reviewed the
20 deposition testimony of Mr. Mitchell and the coworkers
21 to determine if he was sufficiently close to the use of
22 those products while he was working on Elliott turbines
23 and determined that he was, and therefore calculated
24 that he was exposed to that level of fiber release.

25 Q. So it's your testimony then -- well, let me

0132

1 ask you this: did Mr. Mitchell work on an Elliott
2 turbine?

3 A. He worked around Elliott turbines.

4 Q. And is it your testimony then that
5 Mr. Mitchell from working around Elliott turbines was
6 exposed to billions of asbestos fibers?

7 A. More.

8 Q. And what scientific methodology did you use to
9 come up with this number?

10 A. Well, there are specific tests of exposures to
11 the products that Mr. Mitchell worked around on Elliott

12 turbines. Those tests indicate that working around
13 those products causes billions of fibers to be released
14 and inhaled and air breathed within, in some cases,
15 several 100 feet of those turbines. He was around
16 those products within several 100 feet of those
17 turbines while that work was going on and he was
18 breathing. Therefore, since the fibers were in the air
19 and he was breathing, I estimated that he inhaled at
20 least that level of fibers based on the known exposures
21 and known fiber releases from those products that were
22 used on Elliott turbines, his respiratory rate and the
23 time he spent in the vicinity of the turbines.

24 Q. How much time did he spend in the vicinity of
25 the turbines?

0133

1 A. I have to go back and look at his deposition.

2 Q. You don't know off the top of your head?

3 A. That's another thing I don't know off the top
4 of my head.

5 Q. And what type of turbines, Elliott turbines
6 did Mr. Mitchell work around? Do you know any further
7 description? Do you know any manufactures designation?
8 Can you describe them any more than saying it was an
9 Elliott turbine?

10 A. Not without looking at the specs from the
11 turbines --

12 Q. And have you ever --

13 A. -- which haven't been -- which I have asked
14 for and haven't been produced in this case.

15 Q. So you haven't -- you didn't review the specs
16 of the turbines that may have been at issue in this
17 case before forming your opinions?

18 A. That's right because they haven't been
19 produced, and I asked for them.

20 MS. NETTLE: I'm going to object to the
21 nonresponsive portion.

22 Q. The Kaeske firm hasn't provided those to you?

23 A. They don't have them.

24 MS. NETTLE: Objection, nonresponsive.

25 A. The Elliott Turbine Corporation has not

0134

1 provided them to the Kaeske firm.

2 MS. NETTLE: Object to the nonresponsive

3 portion.

4 Q. Okay.

5 A. I'll be glad to take them from you now if you
6 would like. I would be glad to take them at any time.

7 MS. NETTLE: Object to the sidebar.

8 Q. Do you know what products were used on the
9 turbines Mr. Mitchell claims he worked around?

10 A. Yes.

11 Q. What?

12 A. Products specified to be used in these
13 specification sheets that you see in front of you.

14 MS. NETTLE: I'm going to object as
15 nonresponsive.

16 Q. What products do you believe were used on the
17 turbines that Mr. Mitchell claimed he worked around?

18 A. The products specified to be used on those
19 turbines and shipped with those turbines, which the
20 only documents that I have related to that are in front
21 of you. If you want me to go through each of the
22 documents again and point them out, I would be glad to
23 do that.

24 Q. You don't have any documents that indicate the
25 products used on the specific turbines Mr. Mitchell

0135

1 claimed he worked around?

2 A. Beyond the general specification sheets for
3 what goes on turbines normally, no.

4 Q. Do you know if the turbines he worked around
5 had insulation?

6 A. Yes.

7 Q. Was your -- were your opinions -- well, do you
8 believe that insulation had asbestos in it?

9 A. During at least part of the time that he was
10 working around them, yeah.

11 Q. So it's your testimony that the Elliott
12 turbines Mr. Mitchell worked around, at least part of
13 the time he worked around them, had asbestos containing
14 insulation?

15 A. Correct.

16 Q. And was that assumption an integral part of
17 your opinions in this case?

18 A. It wasn't an assumption, it was based on his
19 deposition and the Elliott -- it was based on the

20 facts.

21 Q. Was your belief that those turbines had
22 asbestos containing insulation on them during part of
23 the time Mr. Mitchell worked around them an integral
24 part of your -- forming your opinions in this case?

25 A. It wasn't a belief, those are the facts that
0136

1 I've been presented. If someone presents me with other
2 facts showing that there wasn't asbestos insulation
3 contrary to the facts that I relied on, I'll change my
4 opinion.

5 Q. Whether it's -- in forming your opinions in
6 this case, did you rely on the information that was
7 provided to you that you conclude states that there was
8 asbestos containing insulation on the Elliott turbines
9 that Mr. Mitchell claims to have worked around?

10 A. Yes.

11 Q. And did your reliance on that affect your
12 estimation of the fiber release in this case?

13 A. Yes.

14 Q. What did the turbines Mr. Mitchell worked
15 around look like? How big were they, the Elliott
16 turbines?

17 A. I don't recall, I would have to go look at the
18 deposition.

19 Q. Have you ever seen an Elliott turbine?

20 A. Sure.

21 Q. When?

22 A. In all these pictures on the web site, we've
23 got them right here.

24 Q. Let me be more specific.

25 A. I've got all these spec sheets right here.

0137

1 Q. Have you ever seen an Elliott turbine in
2 person?

3 A. I never shook hands with an Elliott turbine.
4 But I never met an Elliott turbine I didn't like.

5 Q. Have you ever talked to any Elliott employees
6 directly that you know of?

7 A. Not that I know of.

8 Q. So you can't give me any description of what
9 the Elliott turbines Mr. Mitchell claims to have worked
10 around?

11 A. Beyond what's in the deposition testimony, I
12 cannot describe them. I never saw them.

13 Q. Okay. Have you done any tests in this case to
14 determine Mr. Mitchell's overall exposure to asbestos
15 fibers?

16 A. I did an estimate, yes, I did an estimate.

17 Q. And what is your estimate -- is your estimate
18 in any document, is it reflected in any document?

19 A. Sure.

20 Q. Your specific estimate is written down
21 somewhere in a document?

22 A. No.

23 Q. All right.

24 A. You mean as a number, no.

25 Q. What -- is your method of calculating the
0138

1 total exposure of Mr. Mitchell the same as you
2 described for calculating the exposure for Elliott
3 turbines specifically?

4 A. No, there's no valid scientific method for
5 calculating fiber dose based on post hoc
6 reconstructions of someone who was never monitored
7 concurrently. There -- all such reconstructions are
8 performed merely for litigation purposes and have no
9 scientific basis whatever. The main method for
10 determining whether or not he had the sufficient
11 exposure to asbestos insulation from Elliott turbines
12 is the fact that he was exposed to a sufficient amount
13 of fiber from Elliott turbines to cause his malignant
14 mesothelioma which was caused by his asbestos exposure.
15 And that amount is -- can be a very low amount of
16 fibers, perhaps even one fiber, and therefore he had
17 sufficient exposure to asbestos while working around
18 Elliott turbines to cause his mesothelioma, and that's
19 the method.

20 MS. NETTLE: Objection, nonresponsive.

21 Q. Can you describe for me any scientific method
22 you used to calculate the fiber release or the number
23 of fibers Mr. Mitchell was exposed to either overall or
24 from an Elliott turbine?

25 A. There's no valid scientific method to assign
0139

1 specific fiber release to historical fiber exposures in

2 any case like this. There are gross litigation driven
3 methods for estimating exposures that are not valid,
4 not scientific and not reliable. Those methods are
5 similar to the method that I described before.

6 MS. NETTLE: Objection, nonresponsive.

7 Q. Can you state for me any scientific method you
8 personally used in forming your opinions about the
9 number of fibers Mr. Mitchell was exposed to?

10 A. There is no valid scientific method for
11 estimating dose retrospectively in a case like this
12 from exposures to product when the exposures were not
13 measured concurrently. The method of doing so is as
14 described before. You estimate based on previous tests
15 of similar products and similar uses what exposure
16 levels are. Usually with respect to asbestos with most
17 of those products, the exposures are so high, even from
18 a day of exposure, that it's a sufficient exposure to
19 cause the disease. Everything after that exposure is
20 piling on, not necessary to have caused the disease.

21 If you want to estimate the relative
22 exposures from different products you merely take the
23 exposure estimates mentioned before in this answer
24 which are usually wrong by factors as much as a million
25 or two million and then average them by equally wrong
0140

1 estimates with equal error bars of the amount of time
2 someone spent doing different jobs and do a
3 multiplication of the time of exposure versus the
4 estimated exposure during that time during any
5 particular job.

6 But since all workers like Mr. Mitchell
7 are working in the vicinity of asbestos use with a
8 variety of asbestos products in a variety of forms, it
9 is absolutely impossible to estimate with any degree of
10 reliability what the total fiber count was. Not to
11 mention the fact that the variability just from
12 clean-up methods of fibers, which there's never any
13 evidence of in any consistent pattern, is enough to put
14 your dose estimates off by factors of thousands, if not
15 millions.

16 MS. NETTLE: Objection, nonresponsive.

17 Q. Have you done any estimates of fiber release
18 from any product other than Elliott turbines that

19 Mr. Mitchell claims to have worked around?

20 A. No.

21 Q. Did the Kaeske firm ask you to do that?

22 A. No.

23 Q. Do you know any of the job sites at issue in
24 this case?

25 A. What do you mean by that?

0141

1 Q. Do you know any of the places Mr. Mitchell
2 worked?

3 A. Besides what he said about them? You mean,
4 have I been there myself?

5 Q. My question is, can you name for me, as you
6 sit here today without looking at the deposition, any
7 of the job sites he worked at?

8 A. No, without looking I can't name the job
9 sites. I didn't memorize that either.

10 Q. Can you tell me the length of time he worked
11 around Elliott turbines?

12 A. Without looking I can't tell you.

13 Q. Even with looking can you tell me?

14 A. With looking I can give you the best estimate
15 that he and I and his coworker have.

16 Q. Did you come up with some sort of estimate of
17 the amount of time he worked around Elliott turbines in
18 forming your opinions about fiber release from those
19 turbines?

20 A. Yes.

21 Q. And what was your estimate of the amount of
22 time he worked around Elliott turbines?

23 A. It was sufficient to have killed him.

24 MS. NETTLE: Objection, nonresponsive.

25 Q. What is the amount of time that you concluded

0142

1 or you calculated Mr. Mitchell worked around Elliott
2 turbines?

3 A. Sufficient to have killed him, which means at
4 a minimum or let's -- we don't have to go to the low
5 estimate, days, weeks or months. A single day would
6 certainly be more than sufficient to have killed him.

7 MS. NETTLE: Objection, nonresponsive.

8 Q. Is it your testimony then that because

9 Mr. Mitchell contracted mesothelioma, he must have been

10 around an Elliott turbine sufficient time to cause that
11 disease?

12 A. Absolutely not.

13 Q. All right. Can you tell me then how much time
14 you estimated in days, weeks, months, years that
15 Mr. Mitchell worked around an Elliott turbine?

16 A. He worked around Elliott turbines a sufficient
17 amount of time to have gotten enough exposure to have
18 killed him. It's in the months.

19 MS. NETTLE: Objection, nonresponsive.

20 Q. Is it your testimony that Mr. Mitchell worked
21 around Elliott turbines for a number of months?

22 A. That's my general recollection, but I need to
23 look at the depositions to be sure.

24 Q. Do you recall how many months you believe he
25 worked around Elliott turbines?

0143

1 A. No, I don't think he did either.

2 Q. How did you come to the conclusion then that
3 he worked around Elliott turbines for a number of
4 months?

5 A. Reading the depositions of him and his
6 coworkers.

7 Q. Nothing else you relied on to make that
8 determination?

9 A. Correct.

10 Q. How many -- how much time did he spend around
11 other turbines not manufactured by Elliott?

12 A. I don't recall.

13 Q. Did you do that calculation?

14 A. No.

15 Q. How much time did he spend around other
16 products containing asbestos?

17 A. Don't recall.

18 Q. What products did he work with directly,
19 hands-on with that contained asbestos?

20 A. I would have to look at the deposition.

21 Q. You can't name any as you sit here today?

22 A. I could name some but I don't want to make a
23 mistake and slander anybody unnecessary.

24 Q. What are the ones you recall that he worked
25 with directly that contained asbestos?

0144

1 A. Drywall products.

2 Q. Did you do any estimate of the amount of time
3 he worked with drywall products?

4 A. No.

5 Q. Did you do any estimate of the fiber release
6 from drywall products?

7 A. No.

8 Q. Did you do any estimate of the fiber release
9 from any other products besides Elliott turbines?

10 A. No.

11 Q. Do you know how close Mr. Mitchell worked
12 around the turbines, how close was he?

13 A. As close as six feet.

14 Q. And when you say that, that makes me think
15 you're thinking of a range, is there a range of how
16 close he was?

17 A. Yes, he was walking around while the turbine
18 was there.

19 Q. All right --

20 A. So he would walk into the building and then
21 walk to his workplace which was near the turbine when
22 he was doing rebuilds. So there's a whole range of
23 distances, an infinite number of distances between the
24 time he would enter a workplace there was an Elliott
25 turbine and when he would end up working. And when he

0145

1 ended up working, he didn't stay in one place with
2 respect to the Elliott turbine, so there's another
3 probably infinite number of distances between him and
4 the Elliott turbine.

5 Q. Do you know how often or how much time he
6 spent six feet from the turbine?

7 A. No.

8 Q. Is it your understanding Mr. Mitchell never
9 repaired or installed an Elliott turbine?

10 A. No, I don't have that understanding.

11 Q. Do you believe he did repair or install an
12 Elliott turbine?

13 A. No, I don't have any understanding on that
14 issue.

15 Q. You don't know one way or the other?

16 A. Not without looking. If you want me to look,
17 I'll be glad to check my notes, but I didn't memorize

18 that part.

19 Q. Other than the insulation you mentioned, do
20 you believe the turbines Mr. Mitchell worked around --
21 any other portion of the turbines Mr. Mitchell worked
22 around contained asbestos?

23 A. Sure.

24 Q. What portions?

25 A. Gaskets, packings.

0146

1 Q. Anything else?

2 A. That's all I can recall.

3 Q. Is it your belief that the gaskets and packing
4 on the Elliott turbines Mr. Mitchell claims to have
5 worked around contained asbestos?

6 A. Yes.

7 Q. On what do you base that?

8 A. The spec sheets, some of which I just read to
9 you.

10 Q. And you've never seen the spec sheets for the
11 specific turbines Mr. Mitchell claims to have worked
12 around?

13 A. No, those haven't been produced by Elliott in
14 this case.

15 MS. NETTLE: Objection to the
16 nonresponsive portion.

17 Q. So you don't have any document that you can
18 point to that shows for certain there was asbestos
19 containing insulation, gaskets or packing on the
20 specific turbines Mr. Mitchell claims he worked around;
21 is that correct?

22 A. Not true.

23 Q. All right. Show me a document that shows the
24 specific turbines Mr. Mitchell worked around contained
25 either asbestos containing insulation, asbestos

0147

1 containing gaskets or asbestos containing packing?

2 A. Your specification sheets are for all your
3 turbines. There's no nonasbestos use in any of your
4 turbines until 1989 according to your own documents.
5 Every turbine that went out of your place, every
6 turbine that was in place used asbestos products on it
7 until 1989 when the customer started to refuse to use
8 asbestos products on their own.

9 MS. NETTLE: I'm going to object to the

10 nonresponsive portion.

11 Q. Is it your testimony then that Elliott never
12 used nonasbestos gaskets or packing on its turbines?

13 A. No.

14 Q. Is it your testimony that prior to '89 Elliott
15 never used nonasbestos containing gaskets or packing on
16 its turbines?

17 A. I don't recall a cut off year. '89's the year
18 I can remember memos saying that we have to stop using
19 asbestos because the customers don't want us to use it
20 anymore.

21 MS. NETTLE: Object to the --

22 A. I can't remember whether that document
23 referred specifically to gaskets or not, but the
24 document is here, so if you want to take a second I'll
25 look and see if I can find that document.

0148
1 MS. NETTLE: Object to the nonresponsive
2 portion.

3 A. Do you want me to take a minute and look for
4 that document or not?

5 Q. Do you have any document --

6 A. Okay. Well, then let's look for the document
7 so I can answer the question.

8 Q. Sir, I've moved on to my next question.

9 A. I'm not done with my answer. I got a chance
10 to look at the documents.

11 Q. What document are you looking for?

12 A. A 1989 document that refers to removing
13 asbestos from the product specs because the customers
14 don't want asbestos on their products.

15 Q. All right. You've identified the document
16 you're going to look for, I don't need to see it. And
17 I'm going to move on to my next question.

18 MR. TAYLOR: Objection, please don't
19 interrupt his answer.

20 MS. NETTLE: Can you read my original
21 question?

22 (Requested portion was read.)

23 Q. All right. Is that your testimony?

24 A. No, my testimony includes being able to refer
25 to the documents.

0149

1 Q. If you can place your hands on that document
2 quickly, go ahead.

3 A. It's not a -- I can't place my hands on that
4 document within any guarantee of knowing how fast I can
5 find that document.

6 Q. All right.

7 A. So you want the record to be incomplete, it's
8 your record, go right ahead. Next question. There may
9 be other documents that also talk about asbestos
10 gaskets and when they were speced --

11 MS. NETTLE: Objection, nonresponsive.

12 A. -- that I need to look through, but I've made
13 the record, you made your record. Go to your next
14 question.

15 Q. Do you have any document that shows Elliott
16 never used nonasbestos containing gaskets or packing
17 during the years that Mr. Mitchell claimed he worked
18 around asbestos -- around Elliott turbines?

19 A. No.

20 Q. You've never done any air sampling around
21 Elliott turbines?

22 A. Correct.

23 Q. Have you reviewed any air sampling done
24 specifically around Elliott turbines?

25 A. No. Elliott never tested the air exposures

0150

1 from its turbines.

2 MS. NETTLE: Object to the nonresponsive
3 portion.

4 Q. In forming your opinion that Mr. Mitchell was
5 exposed to fibers from an Elliott turbine, did you do
6 any tests or mathematical formulation that can be
7 replicated by another person?

8 A. I gave you the way I did the dose estimate. I
9 already told you it's a nonreplicable, nonscientific
10 process to do that kind of a dose recalculation, and so
11 it can't be reproduced similarly by anybody, that's
12 part of the reason it's not a scientific process.

13 Q. Can you cite to me any epidemiological study
14 that finds working around turbines doubles the risk of
15 contracting mesothelioma?

16 A. I haven't looked, but I'll find one for you.

MS. NETTLE: Objection, nonresponsive.

Q. Can you cite to me any epidemiological study that states that working around turbines doubles the risk of contracting mesothelioma, yes or no?

A. Yes.

Q. What is the cite to those epidemiological studies?

A. This case.

MS. NETTLE: Objection, nonresponsive.

0151

Q. What's your understanding of what an epidemiological study is?

A. Epidemiologic study is a study that describes the distribution of determinants in a population. It may consist of -- in human beings, population of human beings. It may consist of as few as one individual or many individuals. On average most epidemiologic studies that are conducted have about 30 individuals in the exposed group or in a case control study in the exposure group of interest.

Q. Is it your testimony that this case constitutes an epidemiological study?

A. Of a form, yes.

Q. And --

A. And of more than doubling of the risk.

MS. NETTLE: Objection, nonresponsive.

Q. Other than -- I want you to exclude from your consideration for a moment this case. Can you cite to me any epidemiological study that holds that working around a turbine doubles the risk of contracting mesothelioma?

A. Yes.

Q. What is it?

A. Well, there are lists of epidemiologic studies that indicate that there is more than a doubling of the

0152

risk of mesothelioma from doing the work as described in this case by Mr. Mitchell.

MS. NETTLE: Objection, nonresponsive.

Q. I want you to name for me every epidemiological test of workers working around turbines that finds that it doubles the risk of contracting mesothelioma; I want the cite, I want who performed the

8 epidemiological study; can you do that?

9 A. You want turbines in the study. Con Ed.

10 Q. What is that?

11 A. Con Ed, that's a power company in New York.

12 Q. And is this an epidemiological study?

13 A. Sure.

14 Q. Who performed it?

15 A. Con Ed's medical department.

16 Q. When was it performed?

17 A. '70s and '80s.

18 Q. And was it a study of all the workers in the
19 power company?

20 A. I don't know.

21 Q. Who made up the population that was studied,
22 what types of workers?

23 A. Workers working in the power plant around
24 turbines.

25 Q. Are there things other than turbines that
0153

1 exist in a power plant?

2 A. Sure, there's water coolers, there's
3 bathrooms, there's kitchens.

4 Q. Is there pipe covering?

5 A. On the turbines.

6 MS. NETTLE: Objection, nonresponsive.

7 Q. Is there pipe covering in power plants?

8 A. Yes, on the turbines.

9 Q. Is there pipe covering anywhere else in a
10 power plant?

11 A. Sure on -- attached to the pipes attached to
12 the turbines.

13 Q. Is it your testimony that in power plants
14 there's no asbestos containing product other than what
15 you've just stated?

16 A. I don't think so.

17 Q. What types of trades did the populations that
18 were studied by Con Ed, what did they do?

19 A. They worked around turbines.

20 Q. What was their job title?

21 A. Maintenance worker.

22 Q. How many people were in the study?

23 A. Don't recall.

24 Q. Do you know the names of any --

25 A. Never met any of the people who worked there,
0154

1 no. Don't know any of the names of any of the dead
2 people.

3 MS. NETTLE: Objection, nonresponsive.

4 Q. I would ask you to let me finish my question.

5 A. I'm sorry, I thought you were done.

6 Q. Do you know the names of any of the people who
7 performed the studies?

8 A. I can't recall.

9 Q. Do you know the rate of error for any of the
10 studies?

11 A. No.

12 Q. Do you know the confidence level of any of the
13 studies?

14 A. What do you mean by "rate of error" and what
15 do you mean by "confidence level"? Since neither one
16 has a -- you pronounced -- I don't know what a
17 confidence level is, okay. And so I assume we have a
18 different definition of the first term you used as
19 well.

20 Q. I want you to assume confidence level means if
21 the study were repeated a number of times, the
22 confidence interval would indicate the range of
23 relative risk values would result 95 percent of the
24 time. You would get the same results 95 percent of the
25 time if you kept repeating the study, that's an example
0155

1 of a confidence level. Do you know the confidence
2 level for that Con Ed test?

3 A. Okay. You're making up your own word, I just
4 want to make clear. That's not a standard word or a
5 standard definition for that, but that's fine, I'm
6 willing to work with that definition which I don't
7 understand. And I don't know any study that meets that
8 standard ever published in the history of medicine or
9 science.

10 Q. Do you know if there is a confidence level for
11 those tests that you've cited?

12 A. I've never seen a "confidence level" published
13 in any study that I've read on anything.

14 Q. So you don't know it then for that study?

15 A. I don't know it for anything.

16 Q. Do you have copies of these epidemiological
17 studies that you claim show that working around
18 turbines doubled the risk of contracting mesothelioma?

19 A. Not with me.

20 Q. How many -- you don't know how many people
21 were studied in that epidemiological study?

22 A. Correct.

23 Q. Then you can't tell me, I assume, how many of
24 them contracted mesothelioma?

25 A. Correct.

0156

1 Q. Can you tell me if any of them contracted
2 mesothelioma?

3 A. Sure, one makes more than a doubling of the
4 risk unless there were a half a million in the study
5 and there weren't.

6 Q. Do you know if any of them had contracted
7 mesothelioma?

8 A. Yes. One makes for a more than doubling of
9 the risk unless there were more than a half a million
10 people in the study and there were not.

11 MS. NETTLE: Object to nonresponsive.

12 Q. Do you know if the people in the study, if
13 their jobs were similar to Mr. Mitchell's?

14 A. Yes.

15 Q. In what way?

16 A. They worked in and around turbines.

17 Q. Did Mr. Mitchell ever work in a power plant?

18 A. I think so.

19 Q. Did the -- did the people in the study that
20 you've described work anywhere else besides power
21 plants?

22 A. I don't recall.

23 Q. Do you have a copy of the study?

24 A. I don't recall.

25 Q. Can you give me a cite of this study?

0157

1 A. No.

2 Q. Has it ever been published?

3 A. I don't recall.

4 Q. Has it ever been peer reviewed in any way?

5 A. I don't recall.

6 Q. So you can't give me anything that could let

7 me go find this study that you claim shows that working
8 around turbines doubles the risk of contracting
9 mesothelioma?

10 A. Right, but I'll find that one and some more.
11 I will get them to you.

12 MS. NETTLE: I'm going to object as
13 nonresponsive.

14 Q. This is my chance to question you. And I'm
15 asking you as you sit here today, can you give me any
16 information that lets me go find that -- that study?

17 A. No.

18 Q. Any other study that you believe shows working
19 around turbines doubles the risk of contracting
20 mesothelioma, and I want to say epidemiological
21 studies, not just studies in general?

22 A. And you want to say also not by analogy, you
23 want to say with the word turbine in the study, right?

24 Q. I want to know of epidemiological studies of
25 turbine workers, have there been any of those?

0158

1 A. Only turbine workers, people who worked their
2 whole life only working on turbines; is that what you
3 mean?

4 Q. Are there any epidemiological studies out
5 there of people that worked on or around turbines,
6 focusing on the word "on or around turbines"?

7 A. I want to understand the question. You mean
8 that they only worked on turbines, they never did
9 anything else? They only worked in and around
10 turbines; is that the question?

11 Q. My question is: do you know of any
12 epidemiological studies that looked at the risk of
13 contracting mesothelioma for turbine workers, people
14 that worked on or around turbines in general?

15 A. Define turbine worker.

16 Q. People that worked in their career on or
17 around turbines.

18 A. At any point in their career?

19 Q. Do you know of any such studies?

20 A. Well, are you accepting -- are you answering
21 my question on the question? Do you mean at any time
22 around turbines?

23 Q. My question is focusing --

24 A. Or all the time around turbines or 50 percent
25 of the time? I need to understand the question.

0159

1 Q. I'm not asking all the time, I'm not saying
2 one time in their career. My understanding is
3 epidemiological studies can focus on things like power
4 plant workers, they may not have worked in power plants
5 their whole life, but it focused on power plant workers
6 just like the one you discussed. I want to know if you
7 know of any epidemiological studies focusing on people
8 that worked on or around turbines?

9 A. Susan Daum, power plant worker study, I
10 believe.

11 THE REPORTER: Susan?

12 THE WITNESS: D-A-U-M.

13 Q. Is she the person that performed the
14 epidemiological study?

15 A. I believe she's one of the authors on the
16 epidemiological study.

17 Q. When was that study done?

18 A. I don't recall.

19 Q. Where was it published?

20 A. I don't recall. Probably American Journal of
21 Industrial Medicine.

22 Q. Do you know if that study was peer reviewed in
23 any way?

24 A. Yes.

25 Q. How do you know that?

0160

1 A. Because unlike most journals, the American
2 Journal of Industrial Medicine actually has a
3 peer-review process that I've participated in and been
4 subject to.

5 Q. Well, I believe you stated it probably was
6 published there, meaning you didn't know for sure one
7 way or the other. Are you now stating that it was
8 published in that publication?

9 A. No, I haven't changed my position on the
10 original where it was published.

11 Q. So you don't know for certain if it was
12 published there?

13 A. That's correct.

14 Q. All right. Is it your testimony then that if

15 it was published there it was peer reviewed?

16 A. Correct.

17 Q. But other than that, you don't know whether or
18 not it was peer reviewed?

19 A. No, wherever it was published, in my opinion,
20 it was probably peer reviewed.

21 Q. But you don't know one way or the other?

22 A. Don't know what one way or the other?

23 Q. Whether it was peer reviewed. You're saying
24 probably.

25 A. Well, probably is different from not knowing

0161

1 one way or the other as I understand those two phrases
2 or that phrase and that word.

3 Q. Can you tell me how many people were studied
4 in this study?

5 A. No.

6 Q. Did they all work in power plants?

7 A. That's my recollection. At one point or
8 another.

9 Q. Do you know if any of the people studied
10 contracted mesothelioma?

11 A. Yes.

12 Q. Do you know how many?

13 A. You know what, let me do one we can both agree

14 on. Let's go back to the Selikoff studies. Sometimes

15 the most obvious are the hardest to find. Let's look

16 at all of the Selikoff union studies. All those

17 workers in that study worked for one time or another in

18 power plants. They had a 10 percent incidence of

19 mesothelioma. They had a 25 or 30 percent incidence of

20 lung cancer. They were 17,000, I think, 875 workers in

21 the study. There was statistically significant

22 increase in mesothelioma. In fact, it was about a

23 million fold increase in mesothelioma. The P value was

24 less than .00000001 for mesothelioma. And I think

25 that's all I can remember about that one.

0162

1 MS. NETTLE: Objection, non --

2 A. And that was published initially in JAMA in

3 April of 1964, it was presented in October at the

4 meetings in New York at the Waldorf Astoria, and then

5 it was published December 31st, 1965 in the annals of

6 the New York Academy of Sciences. And then it was
7 republished by me jointly with the annals of the New
8 York Academy of Sciences about four years ago. It was
9 again republished in 1968. And then it was published
10 again, the follow up on that series of 1978 and then
11 the final follow up that I'm aware of of that series
12 was published in the Third Wave book in the New York
13 Academy of Sciences in 1991.

14 Q. Are you done with your answer? I don't want
15 to interrupt you.

16 A. Yeah.

17 MS. NETTLE: Objection, nonresponsive.

18 Q. My question was, do you know how many people
19 in the Daum study contracted mesothelioma?

20 A. Daum was a coauthor of part of the study I
21 just gave you.

22 MS. NETTLE: Objection, nonresponsive.

23 A. How many mesos, it was about 10 percent mesos.

24 There were 17,800 or so people in the study, so
25 whatever 10 percent of 17,000 is how many mesos there

0163

1 were.

2 MS. NETTLE: Objection, nonresponsive.

3 Q. Before you started talking about Selikoff

4 studies --

5 A. About 17 hundred mesos.

6 MS. NETTLE: Objection, nonresponsive.

7 Q. Before you started talking about Selikoff
8 studies, you were talking about a study specifically by
9 Susan Daum of power plant workers.

10 A. Right, that's another study, but Susan also
11 was a coauthor with Selikoff on these studies.

12 MS. NETTLE: Objection, nonresponsive.

13 Q. I haven't asked my question yet. The first
14 study by Susan Daum that you were referring to, do you
15 know how many of those studied contracted mesothelioma?

16 A. No.

17 Q. Do you know what year that study was done or
18 approximate year?

19 A. Early '80s. Maybe late '70s.

20 Q. Do you have copies of either the Con Ed -- is
21 it Con Ed or Con Ad?

22 A. Con Ed.

23 Q. Do you have copies of either the Con Ed study
24 or the Susan Daum studies that you've described?

25 A. Susan Daum studies I probably have, I think
0164

1 they're in a 1991 Third Wave book.

2 Q. And I'm asking about the first Susan Daum
3 study that you mentioned regarding power plants, do you
4 have a copy of --

5 A. Correct, yeah, that's the one I'm talking
6 about it. It was published more than once, that is,
7 there was continuing follow up...

8 THE REPORTER: If you turn this way I can
9 hear you better.

10 THE WITNESS: Okay.

11 THE REPORTER: I'm talking about what was
12 published...

13 THE WITNESS: Once, more than once.

14 Q. Have you --

15 THE WITNESS: Why don't we take a
16 two-minute break, not even, and I'll get you some of
17 these studies.

18 MS. NETTLE: Go off the record? Yes?

19 MR. TAYLOR: Yes.

20 (A break was taken from 2:57 to 3:13.)

21 A. Okay. I just want to correct an answer or
22 extend an answer. With respect to the scientific
23 method in terms of fiber measurements, the analogy is
24 that if someone is found drowned and you find water in
25 their lungs, you don't need to know how much water
0165

1 there is in the Atlantic Ocean in which they were found
2 to know that there was a sufficient amount of water in
3 which to drown them. And in fact, it is impossible to
4 calculate at any particular point in time the amount of
5 water in the Atlantic Ocean. But it is an irrelevant
6 question when you find someone whose lungs are full of
7 water who you've dragged out of the ocean. Thanks,
8 that goes to one of the last fiber type calculation
9 scientific methodology answers.

10 MS. NETTLE: I'm going to object that
11 there was no question pending. And that's
12 nonresponsive to my earlier question.

13 (Dr. Egilman and Mr. Taylor confer.)

14 Q. Can you cite to me any peer-reviewed
15 literature or epidemiological study to support your
16 statement that Mr. Mitchell was exposed to billions of
17 fibers from working around an Elliott turbine?

18 A. Sure, the Balzer studies of 1968.

19 Q. Which studies?

20 A. Fleischer Drinker. There were two Balzer
21 studies. I think one was published in the journal of
22 negative results -- oh, I'm sorry, Journal of
23 Occupational Medicine and the other was published in, I
24 think, the American Industrial Hygiene Association
25 Journal. The --

0166

1 Q. Just so we don't have to go back --

2 A. I'm just going through the list, you asked for
3 a list of studies, I'm trying to give you a list of
4 studies. How about if you let me finish the list of
5 studies and then go back and ask specific questions.
6 Otherwise, god forbid, someone reading the record -- I
7 may forget one and not everybody knows all these
8 studies who's going to read this record, and I want to
9 make sure, you know, that they can find them. So do
10 you mind if I finish my answer?

11 Q. Just to make things a little speedier, if you
12 know the date as you're going through the list, would
13 you please give me the date of the study as well,
14 that's all I ask.

15 A. I tell you what, I'll give you as complete a
16 citation as I can. And then if you want to take a
17 break and not count it against my time, I'll go
18 upstairs and print them off for you, a table of these
19 studies all done before 1964. But let's just go back
20 to -- let's start with -- let's start with Merewether
21 who in 1930 described exposures to the mattresses
22 similar or identical to the mattresses used on Elliott
23 turbines and the exposures from those mattresses. And
24 then the -- and he described those as the dustiest of
25 all the processes in his study, so there's a

0167

1 qualitative assessment of exposure to turbine asbestos.

2 And then let's go to Turner & Newall
3 studies of exposures when spraying on turbines, those
4 are unpublished studies but available through --

5 actually some are published now in Tweedale's book.

6 THE REPORTER: Now in what book?

7 THE WITNESS: Tweedale's book, Tweedale.

8 Geoffrey Tweedale with a G, T-W-E-E-D-A-L-E.

9 A. And that was published in 1999 or 2000, I

10 believe. And he published those studies.

11 Some of the -- oh, and then there's the

12 studies of the spraying of asbestos in the British

13 underground. There's a 1932 study published in Lancet.

14 Did I get the year right, Ivan, is it

15 '32?

16 MR. GUSTAFSON: I don't remember.

17 A. Sorry. Ivan usually knows these things. I

18 think it's '32.

19 Then we move to Dreessen who studied

20 exposures around a variety of asbestos products

21 particularly -- and manufacturing, and some of the

22 turbine blankets or mattresses of course were

23 manufactured at the site so they could be form fitted,

24 so that was a similar process to the process of form

25 fitting a turbine with a mattress on site. That was of

0168

1 course what was described in Fleischer Drinker,

2 specifically where they talked about sewing mattresses

3 and gave exposure estimates in Fleischer Drinker.

4 Fleischer Drinker also gave exposure

5 estimates when using asbestos cement on pipes and

6 joints similar to those. In some cases, actually on

7 turbines. Those would be the ship turbines like the

8 ones that Elliott sold to ships, to be put on ships in

9 the Great Lakes and they sold to the Great Lake

10 Shipping Lines. And -- so the exposures to Elliott

11 turbines in ships would have been measured during

12 Fleischer Drinker and they reported those exposures.

13 The exposures to cement were about as high as, I think,

14 260 million particles per cubic foot as I recall, but

15 general air exposures in and around turbines were up to

16 140 million particles per cubic foot in some of the

17 shipyards there was a range of exposures in Fleischer

18 Drinker, 1946.

19 The next exposure studies were done and

20 not published by Turner & Newall also in the '50s. The

21 next set of exposure levels were by -- in the early

22 '60's there's a study by Marr which shows exposures
23 over 5 million particles per cubic foot on board ships
24 working in and around turbines. And boilers there's a
25 study by Leathart, L-E-A-T-H-A-R-T, I think that's in
0169

1 '64. There are -- Selikoff did no exposure studies
2 until Nicholson published some beginning, I think, in
3 '68 and '69. There were the Pittsburg Corning
4 sponsored exposure studies of pipe coverings; those
5 were done in -- between '67 and '69, and some of the
6 results, but not naming the particular products, were
7 presented by Balzer in Helsinki in 1970 in the
8 proceedings of a meeting. Sorry to skip around. There
9 were -- then there's Peele; Peele studies were not
10 published, done in '62 on a variety of exposures from
11 cutting and trimming pipe coverings. And there was a
12 comparison of different pipe coverings. The ones that
13 were specified by Elliott had the highest exposures
14 associated with them, that would be thermobestos, and
15 those levels were three to five times above the
16 threshold limit value even with ventilation at that
17 time period.

18 Then Nicholson published a series of
19 studies that were published in proceedings on shipyard
20 repair, some of which were presented in a meeting in
21 Danzig, I believe, in 1968.

22 Is that right, Ivan, or did I get the
23 year wrong on that one? I can't remember.

24 The whole meeting on shipbuilding and
25 shipyard repair most of the studies revolved around
0170

1 exposures around turbines and boilers.

2 Then we come to some other studies done
3 by Pittsburg Corning of comparing their product to
4 other products in the early '70s. There were studies
5 by Owens Corning certainly about exposures to pipe
6 covering and cutting on pipe covering unpublished in
7 the '50s. That's all I can remember off the top of my
8 head up to '72.

9 Q. Is that the end of your answer?

10 A. Well, no, I can get some more, I've got a
11 chart of those. I'll be glad to either supplement the
12 record or if you want to take a break now that I'm

13 going to miss my flight I can go upstairs and print
14 that off and maybe some of those other citations.

15 By the way, during the break -- we took a
16 break so I could call my staff and they could send a
17 list of the turbine and power plant epidemiologic
18 studies, and they should be coming by fax so that
19 you'll have ample opportunity to look at those.

20 MS. NETTLE: Objection, nonresponsive.

21 Q. Are all the studies that you just testified
22 about peer review; is that your testimony?

23 A. No, the ones that were secret and unpublished
24 were not peer reviewed. Or the ones that overlapped
25 like Balzers, Balzers' studies that he presented to

0171

1 Pittsburg Corning were not peer reviewed but then they
2 were published so they were peer reviewed after they
3 were published. So some of them are yes and no.

4 MS. NETTLE: I'm going to object --

5 A. Fleischer Drinker was maybe peer reviewed, I'm
6 not sure.

7 MS. NETTLE: Object as nonresponsive.

8 Q. Which peer-reviewed studies do you rely on to
9 support your testimony that Mr. Mitchell was exposed to
10 billions of fibers from an Elliott turbine? And I'm
11 asking specifically about peer-reviewed studies that
12 support that conclusion.

13 A. Why don't you define peer review then.

14 Q. What is your understanding of what peer
15 reviewed is?

16 A. Historically peer review has meant that if the
17 editor of the journal knew or was familiar with the
18 publisher -- the person who was submitting the paper,
19 it would be published in some cases without even review
20 by the editor. And that was true of the Journal of
21 Occupational Medicine until at least 1992. And that
22 historically until the mid '90s most journals at best
23 had just the editor read the paper and if he or she was
24 familiar with the material or the author personally
25 then it was published. If the person was not -- by the

0172

1 way, that's still the method with the Journal of
2 Occupational Medicine. That is, the current method for
3 that journal is if the editor reads it, decides it

4 should be published, it's published, and if he's not
5 sure and he sends it out to one or more people, that's
6 the peer-review process.

7 (Phone ringing.)

8 THE WITNESS: Excuse me, this is the
9 faxes, I believe.

10 (A break was taken from 3:26 to 3:28.)

11 Q. Okay. For purposes of my question, I want you
12 to assume by peer reviewed that I mean the article was
13 reviewed by other scientists or experts in the field
14 that was the subject of the article.

15 A. Okay. Well, there's very -- that almost
16 doesn't exist except for as -- there's no way to tell
17 for the major journals whether that's occurred. No
18 journal implemented that process except for the New
19 England Journal of Medicine in the 1990s regularly.
20 And for other journals they may or may not have -- some
21 parts of that, but there's no way to know based on the
22 article whether it went through that kind of review or
23 whether it went through the review that I described
24 that still exists. So except for articles in New
25 England Journal of Medicine after 1990, Annals of
0173

1 Internal Medicine, Lancet after 1995 and I think the
2 American Industrial Hygiene Association in the late
3 '90s, that process -- you can't know because an article
4 is published whether it went through that process or
5 not. So it's impossible for me to know by journal
6 whether it went through the process that you described
7 except for the journals that I just mentioned, during
8 the time periods I just mentioned. So I mean, the
9 American Journal of Industrial Medicine is a different
10 example, theirs are reviewed.

11 MS. NETTLE: I'm going to object to the
12 nonresponsive portion.

13 Q. I just want to know, assuming that definition
14 that I gave you, were any of the articles you listed
15 peer reviewed based on that definition I gave you, if
16 you know?

17 A. They're in journals that engaged in that
18 process.

19 Q. Which ones?

20 A. All of them. But I -- all of the ones that

21 were published. But I can't know whether those
22 articles in those journals actually went through the
23 process or whether they were good ole boy articles as
24 it were. I can't tell on the face of the article
25 whether it went through a real process, which some of
0174

1 the articles in those journals did during some of that
2 time period, or whether they were good ole boy
3 articles; that is, the editor knew the person and they
4 just were published. Or in some cases for example with
5 respect to Beryllium studies, Brush Wellman called the
6 editor of the Journal of Occupational Medicine up and
7 said, we have an article we want to publish on
8 Beryllium and he reserved space for that publication
9 without even seeing it. So I mean, that's -- and
10 that's the same journal that has a peer-review process
11 during the same time for some of the articles.

12 So you know, it's -- I just had an
13 article or a letter rejected by the Journal of
14 Occupational Medicine and it didn't go through any
15 review, and so -- except for the editor, and it wasn't
16 reviewed based on quality.

17 So there is no -- there's no standard
18 peer-review process notwithstanding the Supreme
19 Court's ruling about that, it doesn't exist. It's a
20 fabric -- it's a figment of the fabric of the
21 imagination of the guy who wrote Galileo's Revenge
22 which was cited twice in Daughbeir, but it doesn't
23 exist.

24 MS. NETTLE: I'm going to object as
25 nonresponsive.

0175

1 Q. Just assuming the definition I gave you, can
2 you state whether any of the published articles you
3 mentioned went through the process I described, yes or
4 no?

5 A. With the caveat I just gave, all of the ones
6 that were published did.

7 Q. All of the ones that were published went
8 through a peer-review process of being peer reviewed by
9 other scientists and experts in that field, in the
10 relevant fields, yes or no?

11 A. They're all in journals where some of the

12 articles that were published went through that process.

13 Q. And can you tell me which ones did and which
14 ones didn't of the articles you listed?

15 A. No.

16 Q. Thank you.

17 THE WITNESS: Let's take a break while we
18 wait for the faxes.

19 (A break was taken from 3:32 to 3:41.)

20 Q. Before the break we were talking about a list
21 of studies that you cited to support your opinion
22 regarding Mr. Mitchell, do you have copies of all those
23 studies you referred to or articles? And I don't
24 necessarily mean with you, I just mean in your
25 possession generally.

0176

1 A. I think so but I'm not sure.

2 Q. All right. You've provided a two-page
3 document I've marked as Exhibit 31. It looks like the
4 results of a Medline search; is that what it is?

5 A. Yeah.

6 Q. And when was this search done?

7 A. This afternoon.

8 Q. By someone in your office?

9 A. Correct.

10 Q. And they faxed it to you?

11 A. Correct.

12 Q. What is this -- well, it lists three findings;
13 is that correct?

14 A. Wrong.

15 Q. All right. How many does it list?

16 A. There's a fourth I handwrote down.

17 Q. But the printed material is three findings?

18 A. Correct.

19 Q. What did you write at the bottom? I can't
20 read it.

21 A. Huncharek.

22 Q. How do you spell that?

23 A. H-U-N-C-H-R-E-K.

24 Q. And what's the rest of it say?

25 A. British Journal of Industrial Medicine, 1988.

0177

1 Q. Okay. Are these -- all four of these
2 epidemiological studies?

3 A. Yes.

4 Q. And is it your testimony that all four of
5 these have to do with turbines?

6 A. Yes.

7 Q. And do any of these studies find that working
8 around turbines doubles the risk of contracting
9 mesothelioma?

10 A. Yes.

11 Q. Which ones?

12 A. All of them.

13 Q. Do you have copies of all four of these
14 articles?

15 A. I have them or I have access to them.

16 Q. But you don't have them with you today?

17 A. No, but I can get them for you today.

18 Q. Okay. If you can get them that would be
19 great.

20 A. Do you want to take a break on your time?

21 Q. We can just do it on the next break. I don't
22 need them before the end of the depo, I would just like
23 to have copies.

24 A. Let's see...

25 Q. Are you going to testify in this case

0178

1 regarding the diagnosis of Marty Mitchell of
2 mesothelioma?

3 A. I'm prepared to testify on that.

4 Q. And what are your opinions pertaining to --
5 well, let me narrow that down. Are you prepared to
6 testify that you confirm or dispute the diagnosis of
7 Marty Mitchell's mesothelioma?

8 A. Yes.

9 Q. Which one? I assume that you're going to
10 confirm that he had mesothelioma; is that right?

11 A. Yeah, in my opinion he had mesothelioma. I
12 don't think there's any dispute about that in anything
13 I saw.

14 Q. And are you basing that on Dr. Battifora's
15 report?

16 A. And there's I think another expert's case and
17 report, and the medical records.

18 Q. And did you look at any --

19 A. And his history of exposure around Elliott

20 turbines.

21 Q. Do you believe his exposure to asbestos from
22 any product other than Elliott turbines caused his
23 mesothelioma?

24 A. May have.

25 Q. Did you look at any pathology slides or tissue
0179

1 in this case?

2 A. No.

3 Q. Have you looked at any company specific
4 documents in this case other than --

5 A. Let me just change that may have to probably
6 did --

7 Q. Okay.

8 A. -- contribute to.

9 Q. Have you looked at company specific documents
10 for any other defendant in this case in preparing your
11 opinions in this case?

12 A. For this case, no -- oh, yes, Johns-Manville.
13 Right here, I got these other documents from
14 Johns-Manville. These are the ones I promised you
15 before that were different from the Manville document
16 that you have that are from the same kind of a document
17 of fiber release.

18 Q. We can get to that in a minute.

19 A. Okay, just didn't want you to forget.

20 Q. Have you been asked by the Kaeske firm to
21 testify about any specific company other than Elliott
22 in this case?

23 A. No.

24 Q. Were you asked to testify about Owens Corning
25 in this case?

0180

1 A. No.

2 Q. Is your opinion in this case solely for the
3 purpose of litigation?

4 A. No.

5 Q. For what purpose did you form your opinions in
6 this case other than for the litigation involving Marty
7 Mitchell?

8 A. To use the response of Elliott Turbine
9 Incorporated or lack thereof, to the knowledge
10 available to a manufacture who sold asbestos products

11 as an example of how bad it can be for a company to
12 ignore 100 years of medical literature and still expose
13 people to hazardous products without any warning. And
14 where I'll put that in is in the book chapter that I'm
15 writing on the history of warnings. The editor of that
16 book is Wogalter and it's called Warnings and Risk
17 Communication. And this seems to me to be a relatively
18 classical case that will fit nicely in the article that
19 I've submitted as a slight addendum.

20 MS. NETTLE: Objection, nonresponsive.

21 Q. Was your review of Elliott documents prompted
22 by a request by the Kaeske firm in this Mitchell case?

23 A. No, it was prompted by your deposition notice.

24 Q. Noticed in Marty Mitchell's case, correct?

25 A. Right.

0181

1 Q. You generally offer testimony about the
2 articles that were available in the medical and
3 scientific literature, and you've listed some of those
4 earlier today. Is part of the basis for your opinions
5 that Elliott should have been aware of these articles
6 that they could have gone to the library and found
7 them?

8 A. That's part of the basis of my opinion.

9 Q. Were those same articles available to the
10 government, the U.S. Government?

11 A. The published articles were.

12 Q. Any articles that you contend Elliott had
13 access to that you contend the government did not have
14 access to?

15 A. Yes.

16 Q. Which ones?

17 A. Well, not published articles but secret
18 articles.

19 Q. And using your term "secret articles," what
20 secret articles do you contend Elliott had access to
21 that the government did not have access to?

22 A. Well, one we've already shown, the document
23 from the gasket company indicating what the material in
24 the gasket was, what they estimated fiber releases to
25 be and what the hazards were. The other materials that

0182

1 the government didn't have access to were the specific

2 specifications of asbestos on the Elliott products, how
3 they were applied and used. How exposures could occur
4 on Elliott products. All of that was information that
5 was kept from the government by Elliott.

6 MS. NETTLE: Objection, nonresponsive.

7 Q. Are there any --

8 A. For example -- I'm not done with my answer --
9 EPA has a requirement that asbestos product
10 manufactures report products that they manufactured and
11 sold. And Elliott has failed to report to the EPA that
12 it sold turbines specified to use and sent them out to
13 deal with asbestos products in them and on them.

14 Q. What specific articles do you contend Elliott
15 hid from the government?

16 A. I don't contend they hid articles, they hid
17 their specs. They didn't report their specifications,
18 nor have they responded appropriately to the EPA
19 requirement to tell the EPA all the asbestos products
20 that you sold, that's been hidden.

21 MS. NETTLE: Objection, nonresponsive.

22 A. That's not a study.

23 Q. Are there any articles you contend Elliott hid
24 from the government?

25 A. No, Elliott didn't do any studies of the

0183

1 possible hazards from the use of asbestos on its
2 products.

3 MS. NETTLE: Objection, nonresponsive.

4 A. As far as I know.

5 Q. Are there any articles that you contend
6 Elliott hid from the government?

7 A. No, not studies of asbestos exposures.

8 MS. NETTLE: Objection, nonresponsive.

9 Q. Are there any articles at all that you contend
10 Elliott hid from the government?

11 A. Medical articles you mean?

12 Q. Any --

13 A. Maybe there's a communication problem about
14 articles.

15 Q. Evidently.

16 A. Okay, well --

17 Q. I asked you --

18 A. Why don't you explain what you mean by

19 articles.

20 Q. Are there any articles you contend Elliott hid
21 from the government? And you said, no. And then you
22 qualified it to certain types of studies. I'm asking
23 broadly, are there any articles, be it medical, be it
24 scientific, be it some other type of article that you
25 contend Elliott hid from the government?

0184

1 A. By article, do you mean study?

2 Q. I mean article, I mean study.

3 A. Okay. Well, all of the studies that we went
4 through before as far as I know none of those have been
5 reported to the government.

6 Q. And do you have any evidence to show Elliott
7 had actual knowledge of those studies?

8 A. They are Elliott studies, the ones that we
9 talked about.

10 Q. Which studies?

11 A. All the ones we talked about before when you
12 asked me about studies.

13 Q. I want to know specifically which studies you
14 contend Elliott hid from the government?

15 A. All of the studies that I talked about before
16 have never been produced to the government. The
17 temperature studies, the flow studies, none of those
18 have been produced to the government as far as I know.

19 Q. And you're talking only about studies that
20 Elliott performed?

21 A. Right.

22 Q. All right.

23 A. On Elliott turbines. Heat, temperature
24 studies, specification studies, all those studies.

25 Q. Is it your contention they had a duty to

0185

1 report those to the government?

2 A. I don't know. I don't know if they had
3 government contracts or not.

4 Q. What EPA regulation are you referring to that
5 you contend required Elliott to report certain
6 information?

7 A. There's an EPA regulation that requires
8 companies that manufactured asbestos products to report
9 to the EPA and the nature of the products they sold and

10 I believe the approximate amounts distribution.

11 Q. What is that regulation?

12 A. I don't know the code.

13 Q. When was it enacted?

14 A. I think the early '90s. Maybe late '80s.

15 Q. Do you have any actual knowledge that Elliott
16 has complied or failed to comply with this regulation?

17 A. Yes, I checked the list and I didn't see any
18 indication that -- I've checked the list in the past
19 and I have never seen any indications that Elliott ever
20 reported that it sold asbestos products on its
21 turbines, with its turbines, etcetera.

22 Q. What list are you referring to?

23 A. EPA has a list of companies that have reported
24 what asbestos products that they made and you can
25 Fourier them for that or sometimes if they're nice, ask
0186

1 them for it.

2 Q. Do you have a copy of this list?

3 A. Maybe.

4 Q. Do you know if you have a copy?

5 A. Don't know.

6 Q. What's the title of that document, if you
7 know?

8 A. I have no idea.

9 Q. Do you know if Elliott had a duty to report
10 any of its products to the government pursuant to that
11 EPA regulation?

12 A. On the face of the regulation they did.

13 Q. What do you mean by "on the face of the
14 regulation"?

15 A. The regulation, as I recall reading it, says,
16 if you manufactured or sold an asbestos containing
17 product you have to tell the government that you did
18 that and you have to report that to the EPA. And
19 that's historically, not just going forward from the
20 date of the statute.

21 Kaeske's ex-wife used to work for the
22 EPA, speaking of ex-wives.

23 Q. Going back to the articles that you mentioned,
24 did union representatives have access to the articles
25 you contend were in the general medical and scientific
0187

1 literature?

2 A. I have no idea. What union? Who? Most of
3 the union people I've met, with all do respect, don't
4 read medical literature on a regular basis. Now, there
5 is an exception, my mother-in-law's boyfriend who's a
6 union pipe fitter in New York would read that stuff.
7 He's the only one that I've ever met who's read that
8 stuff.

9 Q. Is it your contention, though, that had they
10 gone and looked, they would have had access to the same
11 articles?

12 A. Depends where they were. Not most of them
13 because not all medical libraries would have it. Now,
14 Elliott was located near Pittsburg and of course they
15 had the Industrial Hygiene Foundation and the Pittsburg
16 libraries and I know it was all within -- well, first
17 they were in Pittsburg but then they moved out of
18 Pittsburg, but they were always close to Pittsburg. So
19 I know the libraries in Pittsburg had this material.
20 But if you're asking me if the library in Brazoria had
21 the material, I'm sure it didn't. Been there, done
22 that, they don't have this material. Other parts of
23 Texas, remote, small towns -- I've been to Paris,
24 Texas. Paris, Texas they don't have this material.
25 Okay. Major cities, major hospital libraries, some

0188

1 medical school libraries will have some but not all of
2 this material. New York Public Library has almost all
3 of this material as does the library of congress.

4 MS. NETTLE: Objection, nonresponsive.

5 Q. Would Mr. Mitchell's employers have had access
6 to the same articles that you've mentioned?

7 A. I don't know.

8 Q. Do you believe that employers of workers have
9 an obligation to research medical and scientific
10 journals?

11 A. Depends.

12 Q. On what?

13 A. If they manufacture a product that -- let's
14 say -- let's try to be relevant with this answer
15 despite the question. If they manufactured a product
16 that contained asbestos then they're required to be
17 held to the standard of an expert in the field and

18 would be required to research that information. If
19 they're an employer who merely uses products, it's
20 reasonable for them to rely on the product supplier in
21 most cases, unless there's a reason for them to know
22 beyond what the product supplier tells them through
23 their own training or experience or reasonable inquiry
24 that might drive them to -- they would need a reason to
25 know, that's kind of the -- actually the statute in
0189

1 Virginia in terms of general duty. But for an
2 employer, I think that generally applies.

3 Now, in some cases, with respect to some
4 uses of asbestos, employers had a reason to know and
5 should have known at least the sum of what was
6 available in the literature whether or not they had
7 possession of every last piece of evidence about that,
8 the health effects of asbestos.

9 MS. NETTLE: Objection to the
10 nonresponsive portion.

11 Q. You worked for the U.S. Public Health Service,
12 correct?

13 A. I did.

14 Q. Did the U.S. Public Health Service have access
15 to these same articles that you've discussed?

16 A. Some. The published ones.

17 Q. And tell us generally, does the U.S. Public
18 Health Service -- it's a branch of the military; is
19 that right?

20 A. Well, it's a uniformed service. I have made
21 that error in the past. I thought it was a military
22 service but it is a special classification of -- called
23 a uniform service. You have ranks that are the same as
24 the military and you're on call the same as the
25 military and you get veterans benefits and get a green
0190

1 card the same as the military, but it's not technically
2 a part of the military which is limited to the Army,
3 Navy and Air Force.

4 MR. TAYLOR: Marines.

5 THE WITNESS: No, Marines are part of the
6 Navy, as I recall.

7 Are the marines not part of the Navy?

8 MR. MCGOWAN: Yes, it is.

9 THE WITNESS: Thank you very much.

10 Mr. Taylor, you can go back to sleep now.

11 Q. (BY MS. NETTLE.) Does the U.S. Public Health
12 Service staff, for example, the Center for Disease
13 Control, CDC?

14 A. Some of the people there are public health
15 service people, some of them are civilian in the -- now
16 the physicians in the civilian service there are in a
17 special category of senior executive service usually,
18 called senior executive service.

19 Q. Do they staff VA hospitals?

20 A. Most of the physicians at VA hospitals are not
21 public health service employees.

22 Q. Does the U.S. Public Health Service study
23 potentially dangerous substances in the workplace?

24 A. At the current time?

25 Q. At any time.

0191

1 A. Have they at times, yes, they have at times.
2 Some parts of the -- some small parts of the U.S.
3 Public Health Service have studied work-related
4 diseases and injuries.

5 Q. When did the U.S. Public Health Service first
6 issue any warnings about asbestos?

7 A. Any warnings, probably 1938.

8 Q. And what warnings were those?

9 A. That was the document that indicated that half
10 of the people who were exposed to the threshold limit
11 value for 20 years got asbestosis, called Dreessen,
12 Public Health Reports 241.

13 MS. NETTLE: All right. I'm going to
14 object to the nonresponsive portion.

15 Q. I'm not asking about articles. I'm just
16 asking when, if ever, did the U.S. Public Health
17 Service issue any warnings to the general public about
18 the dangers of asbestos?

19 A. It's not a function of the U.S. Public Health
20 Service to issue warnings under any circumstances.

21 Q. Have they never done that then?

22 A. The U.S. Public Health Service has never done
23 that. NIOSH has done that and the EPA has done that
24 and Public Health Service personnel stationed with
25 NIOSH and the EPA have participated in that. And the

0192

1 public health service in Dreessen did that.

2 Q. Now, in forming --

3 A. But Dreessen -- excuse me, Dreessen was not
4 issued by the Public Health Service per se, except as
5 it was at that time a -- it was really an issuance of
6 the department of treasury. So it was the treasury
7 department issuance for -- published by the Public
8 Health Service under the aegis of the treasury
9 department. I can't believe I know all these things.
10 What a cluttered mind.

11 Q. In forming your opinions on state of the art
12 and what companies knew or should have known, I would
13 assume part of the basis for those opinions are the
14 research you've done in locating these number of
15 articles and ascertaining when they were published and
16 where they were published; is that a fair statement?

17 A. I don't know.

18 Q. Is that part of the basis of your opinions on
19 what companies knew or should have known?

20 A. You're assumption about what I would do is --
21 your assumption about what I would do is not part of
22 the basis of anything that I've given as an opinion now
23 or ever before.

24 Q. I'm not asking about my assumption.

25 A. Well, that was what you said in the question.

0193

1 You said you assumed blah, blah, blah, and then you
2 referred to that question.

3 Q. I'm asking you one way or another in forming
4 your opinions on what companies knew or should have
5 known, is part of the basis of those opinions the fact
6 that you have done this research locating articles and
7 ascertaining where they were published and when?

8 A. Yes.

9 Q. What, in your educational training, if
10 anything, do you feel qualifies you to then draw
11 conclusions from those publications and the dates of
12 thier publications about what companies knew or should
13 have known?

14 A. Could you repeat that question?

15 (Requested portion was read.)

16 Q. And I think to clarify that was -- there was

17 an of that should be a from in there. Conclusions from
18 those publications. Draw conclusions from those
19 publications about.

20 A. Why don't you read it again as amended.
21 (Requested portion was read.)

22 A. About what?

23 Q. About the dangers of asbestos.

24 (Dr. Egilman and Mr. Taylor confer.)

25 MR. TAYLOR: Objection, compound.

0194

1 A. And now I'll answer it. Okay. This is a long
2 answer, you understand that? I would like to be able
3 to complete it although you feel free to withdraw it at
4 any time. I'll break this down into several parts.

5 And let me list those parts. First, will be
6 educational training that qualifies me to determine
7 what publications existed and when they existed.

8 Then -- so that's part one -- are you
9 writing that down in case I forget?

10 MR. TAYLOR: Uh-huh.

11 A. And part two will be what in my educational
12 training qualifies me to determine what was in those
13 publications that could have been known about the
14 dangers of asbestos.

15 And the third part of the answer will be
16 what in my educational training qualifies me to
17 determine that companies should have known what I've
18 established they could have known in question -- in
19 sub-part two.

20 Q. And just to preface that --

21 A. I didn't even start my answer, that's just my
22 outline and you're already interrupting me.

23 Q. I know, I know.

24 A. Can I just -- I just did the outline of the
25 answer, you're already interrupting me. Can you please

0195

1 let me answer the question?

2 Q. I'm going to let you answer, I just want to --

3 A. I said you could withdraw the question any
4 time you want but without withdrawing the question I
5 would just please appreciate it if you would let me
6 answer it. And as soon as you don't like the answer,
7 feel free to withdraw the question. But short of that,

8 I would like to be able to answer the question.

9 Q. I'm going to allow you to answer the question.

10 A. Without interruption, comment, commentary,
11 refinement, correction, interjection, expansion,
12 etcetera.

13 Q. In order to answer this I just ask that you
14 answer the question asked and not 10 other questions
15 that I didn't ask. But if you want to go on I will be
16 willing to sit here all night. But I ask that you
17 limit your response to the question that was asked.

18 MR. TAYLOR: Objection, please don't
19 interrupt the witness.

20 Q. And I would also ask that you refrain from
21 yelling at me. I've given you that courtesy all day.

22 A. I did not yell at you.

23 Q. You've yelled at me repeatedly. I would ask
24 that you refrain from doing that?

25 A. I did not yell at you. And you've interrupted
0196

1 me repeatedly all day long. And you've made insulting
2 comments all day long.

3 MS. NETTLE: Objection, nonresponsive and
4 to sidebar comments.

5 A. Exactly, started by you in the middle of my
6 answer.

7 Q. Go ahead.

8 A. Okay. The training that qualified me to
9 determine what publications existed and when. I was
10 taught how to use libraries in junior high school and
11 high school, in history courses and science courses.
12 In college I was taught how to use indexes like
13 chemical abstracts, Medline, Index Medicus, mechanical
14 engineering indexes, computerized databases. In
15 medical school I was taught how to research particular
16 medical questions of cause and effect and the
17 relationship between them, in addition to studying the
18 specifics of those issues in many courses. But just
19 with respect to the research methodology, that was the
20 part of many individual courses, including the course
21 in pathology, course in biochemistry. The biochemistry
22 course included, in addition to locating articles -- I
23 had three or four courses as an undergraduate that
24 specifically were on reading and interpreting medical

25 literature and researching medical literature.

0197

1 There was a course in biochemistry by
 2 Rothman, another course in molecular biology by Arthur
 3 Landy, there were -- there's a physical chemistry
 4 course, chemistry 13 at the time where we learned about
 5 researching chemical abstracts and other chemical
 6 formulas. I don't remember who taught that course but
 7 I did get an A -- oh, and that I guess is relevant to
 8 this. I got A's in all of these courses except the
 9 biochemistry, I got a B plus in that biochemistry
 10 course. But otherwise, I got A's in all these courses
 11 except that one biochemistry course and a physics
 12 course which I got a B in which is not relevant to this
 13 answer. So the fact that I did well in those courses I
 14 think is also -- indicates that I learned properly how
 15 to do this research.

16 In medical school we would have to, when
 17 we almost -- we would have to deal with cases as they
 18 were presented and we would have to do research around
 19 cases. For example, there was something called the
 20 Clinical Pathologic Conference which was not just used
 21 in pathology because Brown had a systems method for
 22 teaching organ systems. So in each system, which we
 23 took during the second year of medical school, we would
 24 have cases and we would be responsible for going to the
 25 library independently, with the assistance of faculty

0198

1 or residents sometimes and researching the medical
 2 literature to determine a differential diagnosis and to
 3 apply the material in the medical literature to that
 4 differential diagnosis, so that overlaps, as I've
 5 defined it, sub-parts one and two of my answer.

6 Okay. Then in the third year of medical
 7 school, which is a clinical year, in every rotation all
 8 I would do day after day was see patients, go read
 9 literature about those patients, present that
 10 literature to either my resident or faculty member at
 11 daily and weekly rounds. In addition, I would attend
 12 week -- weekly conferences, grand rounds and others in
 13 the hospital where I would watch other people present
 14 and learn about sources of information and ways of
 15 interpreting medical information to deal with

16 cause/effect relationships and evaluations of treatment
17 and examinations.

18 Basically the same methodology was
19 applied in my internal medicine residency because when
20 we saw patients we were required to look up literature.
21 There were lectures on a -- every morning we would
22 present cases and I would attend case presentations.
23 And at the case presentations people would discuss
24 medical literature, how they found medical literature,
25 what they found and how to interpret medical
0199

1 literature. So that's a conflation of parts one and
2 two of my answer.

3 Some time during my residency, I think in
4 the second year, I began to develop a more serious
5 interest in research and occupational health issues
6 particularly. And as part of my residency I developed
7 a -- the beginnings of a research project, so I
8 researched everything that was available on isocyanates
9 and disease using all of the methods that I've
10 explained before, reviewing those methods with faculty
11 members as I developed that research protocol which I
12 brought -- well, no, skipping.

13 Skipping to Harvard which is after my
14 residency. At Harvard we did the same thing again. I
15 took courses in epidemiology, statistics, medicine,
16 industrial hygiene and the law. The law school courses
17 were -- overlapped with the Harvard School of Law that
18 dealt with all legal issues with respect to
19 occupational and environmental health issues, and
20 that's the first training thing that relates to the
21 should have known question. Since issues that relate
22 to the should have known from a legal and regulatory
23 perspective were discussed and taught specifically in
24 two courses in the School of Public Health and two
25 courses that I took that were overlapped between the
0200

1 School of Public Health and the law school at Harvard
2 and the Sloan School of Management. Those two courses
3 were taught by Nick Ashford, A-S-H-F-O-R-D, the author
4 of Crisis in the Workplace, 1974, funded by the Ford
5 Foundation. That book was used, with updates, as the
6 textbook in that course and so -- and that book went

7 through many of the issues about availability of
8 information, interpreting information, as did that
9 course. Both in terms of how knowledge was acquired,
10 etcetera.

11 It was first at Harvard in an
12 occupational medicine course by Monson that I started
13 to get specific training in epistemology. Now, we're
14 moving really to question number two. Epistemology
15 being the philosophy of science of how we know what we
16 know. Which I, by the way, have taught at Brown, a
17 course in, since about 1991. And during that course
18 Monson stimulated my interest in that exact topic. And
19 then I began to read, in part on my own and in part for
20 my work at NIOSH, philosophers of science beginning
21 with Canguilhem and Bachelard, Foucault, Feyerabund,
22 Kuhn, Popper. Popper was specifically taught by
23 Rothman. There's a course at Harvard by Rothman,
24 another by Miettinen, both of which were -- covered
25 specific topics in epistemology. Particularly
0201

1 Miettinen's text where we looked at frequentist
2 bayesian statistics, rationalism and inductive
3 reasoning, all of that was incorporated into the
4 courses that Rothman and Miettinen taught at Harvard.
5 And while they only covered small parts of Kuhn and
6 Popper and Bayes' theorem in their courses, I was
7 particularly interested in the topic and did extra
8 work, and that's the genesis of the course that I teach
9 now.

10 Then I -- this is -- I guess educational
11 training doesn't have to be formal. So I've had many
12 discussions with these -- on these topics over the
13 years with Rothman, Sandra Greenland, Charlie Pool,
14 Jamie Robins at Harvard who is really the premier
15 theoretical epidemiologist in the world. And all about
16 this issue of how we know what we know. How physicians
17 and scientists make decisions, and in the philosophy of
18 both science and epidemiology, and that would include
19 both the philosophy of epidemiology and the
20 mathematical modeling and technical -- statistical
21 issues that relate to interpreting epidemiologic
22 studies and data.

23 So we're in public health school now? I

24 can give you more details if you want on the duty to
25 know what specifically we covered, but we certainly
0202

1 covered the history of the development of OSHA and the
2 EPA, the history of torts, the history of regulations
3 by states, corporate influence on regulations and
4 standard setting. The whole issue of standard setting
5 from the EPA TSCA AE we discussed specifically and
6 studied specifically in the Ashford course. There was
7 one course on OSHA which I took another course which
8 was on other aspects of occupation and environmental
9 health from Ashford that I audited that was the course
10 that covered EPA and related subjects.

11 With respect to warnings and the history
12 of warnings, those were parts of the occupational
13 health course at Harvard and also there was a specific
14 course on warnings and risk communication that I took
15 separate and apart from occupational health which
16 included the history of warnings and also the duty to
17 warn and the nature of warnings and risk communication.

18 With respect to interpreting industrial
19 hygiene data and availability of industrial hygiene
20 data, I took two industrial hygiene courses both taught
21 by Burgess who was the author of a textbook on
22 industrial hygiene and evaluation. And in addition,
23 those courses brought us -- we had a -- we specifically
24 had a methodology that we learned in terms of
25 evaluating workplace hazards, that was part of that

0203

1 course that included interpretation of medical
2 industrial hygiene data in the context of evaluating
3 worker exposures.

4 Oh, for epidemiology reading,
5 particularly the Monson course but also the -- the
6 Monson course was kind of designed around reading and
7 interrupting literature. That is, each week we were
8 given two to five articles to read. And he actually
9 had a form that you would fill out that would go
10 through all of the -- you would have to evaluate the
11 article for bias, what kind of bias. How do you
12 evaluate the system of testing? How do you combine
13 data? So each week -- and most of that was in
14 occupational examples, there were some environmental

15 examples -- each week the course would be centered
16 around reading literature in the occupational and
17 environmental health field, interrupting that
18 literature and evaluating the literature and also
19 looking at access to literature and information.
20 Because he particularly talked about unpublished
21 information since he had done consulting for some
22 companies and talked about the information that he'd
23 come across that was not generally available and he
24 intermixed that in his course. That was probably one
25 of the first times that I became familiar in a formal

0204

1 since with the unequal distribution of information,
2 vis-a-vis product manufactures and others in the
3 medical and scientific community the weight of
4 information generally being heavier, that is more
5 information with companies than the medical and
6 scientific community -- medical and scientific
7 community.

8 Then at NIOSH I took that isocyanate
9 study, did more research and turned that into an
10 epidemiologic study. And so we had people come into
11 NIOSH, interestingly enough many times historical --
12 people with historical perspective who would talk about
13 what was known when. And I should have said this in
14 medical school, every lecture in medical school -- and
15 Ivan remembers this, I believe, when he asked this
16 question once before. I hope he remembers this
17 answer -- almost every lecture in medical school on
18 every topic starts with a historical perspective, it's
19 quite interesting. Because they'll say this is -- for
20 example, a lecture on diabetes will start with the
21 discovery of insulin. How that was discovered, when it
22 was discovered. Whether the discovery reached medical
23 acceptance or not, and where it was published or what
24 happened to the information. And so essentially every
25 medical school lecture on any topic was a lecture on

0205

1 the history of the development of knowledge of that
2 particular topic. That's what he remembers.

3 MR. MCGOWAN: And then he withdrew the
4 question at that point.

5 THE WITNESS: He did withdraw the

6 question.

7 MR. MCGOWAN: At 17 pages.

8 A. Okay. But I'm older now than then so I have
9 more. I'm trying to limit to formal education. So --
10 then I did a third residency in preventive medicine.
11 And the preventive medicine really focused more than
12 the others on the history development and knowledge
13 about warnings. How to measure the effectiveness of
14 warnings and that gives me some training and education
15 in drawing conclusions about what companies should have
16 known about warnings and risk communication
17 historically.

18 Then in the history courses -- let me go
19 back to -- I learned about using other indexes. Those
20 indexes would be indexes of -- for example, I learned
21 how to use Lexis-Nexis, I don't remember when that was,
22 which allows you to access general publications. And
23 then I learned that there were indexes of -- I can't
24 remember the specific course -- of general publications
25 like Scientific American, Newsweek, those have separate
0206

1 indexes. And so I learned about those indexes and how
2 you access those indexes. I can't remember what course
3 that occurred in.

4 Okay. Now, the should have known has two
5 parts, the first part would be the -- the regulatory
6 and legal piece that I learned in the courses that I
7 took at the -- law school courses and the -- in my
8 service at NIOSH and in my consulting as a consultant
9 to companies on these issues.

10 The second part really is simpler and
11 really comes from experience, but since I now teach
12 about these materials I'm going to lump it in here.
13 And that is since there were other similarly situated
14 companies who knew of the medical literature and who
15 warned during the -- at different points in time, and
16 since I've researched that and published on that I can
17 compare what other companies did with what, say,
18 Elliott did with respect to the information that was
19 available. And so for example, the railroads who had
20 steam boilers similar to Elliott were warning in 1937
21 and had a whole program for protecting workers and
22 bystanders from those exposures. Owens Corning

23 Fiberglass had a whole pamphlet on warning about
24 certain information hazards in 1941.

25 So my training in the kinds of

0207

1 information that was -- the document I brought here,
2 that we haven't talked about yet, the Manville document
3 indicates that Manville was telling customers to reduce
4 the dust and use respirators and ventilation with
5 marinite in the 1950s. So my independent research,
6 which I now teach about and have published about, is
7 also part of what qualifies me to draw conclusions
8 about what other companies should have done comparing
9 them to what other companies actually did who were
10 similarly situated. That's a short answer but it's
11 probably long -- if you would like more, I can give you
12 some more.

13 What I omitted, specifically, is my
14 experience consulting for companies and reviewing
15 corporate documents and advising companies about
16 warnings historically and what they should have done or
17 should do at a particular point in time, and all of the
18 things that I've published on these particular issues
19 in peer-reviewed medical literature and all the papers
20 that I've presented on these issues at meetings where
21 my submissions had to be approved by the panels that
22 were there before I was allowed to present information.
23 That's the end of that answer in brief form.

24 MS. NETTLE: Objection, nonresponsive.

25 Do you need to take a break you said?

0208

1 THE REPORTER: Yes.

2 (A break was taken from 4:35 to 4:46.)

3 Q. Sir, have you ever taken an academic course
4 specifically that taught you how to draw conclusions
5 about what companies should have known, yes or no?

6 A. Yes.

7 Q. And if I ask you what those courses are, will
8 I get an answer as lengthy as your previous answer
9 before the break?

10 A. I don't think so.

11 Q. How many courses did you take specific to --
12 that specifically taught you how to draw conclusions
13 about what companies should have known?

14 A. Probably four, five.

15 Q. Will you name those courses for me?

16 A. Sure, the two Ashford courses, the two courses
17 by Les Boden at the Harvard School of Public Health,
18 the course I teach and the course on warnings at the
19 Harvard School of Public Health.

20 Q. Without giving me the entire syllabus for the
21 whole semester, will you tell me generally the name of
22 those courses or the title of the course?

23 A. I don't remember the titles of the courses.

24 Q. Can you give me the general subject matter in
25 brief format?

0209

1 A. The warnings was on warnings, when you're
2 supposed to warn based on what information, who's
3 responsible for warning, how do you design a warning.
4 The two law school course were on corporate duty to
5 inform, interpretation of medical literature,
6 interpretation of medical literature and the context --
7 it's really right on point, right on everything I
8 testify about, both of Ashford courses were. And then
9 the Les Boden course was about -- probably half of that
10 dealt with these same issues in that format.

11 My course deals with about half. Half of
12 my course deals about the philosophy of how you know
13 what you know and the other half deals with specific
14 case examples about corporations who did or did not
15 conform to the standards of the time.

16 Q. Do you use any scientific method to draw your
17 conclusions about what companies should have known, yes
18 or no?

19 A. Yes.

20 Q. And can you describe that -- well, is that
21 scientific method something that can be replicated by
22 another person looking at the same data?

23 A. Yes.

24 Q. Can you briefly describe that scientific
25 method for me?

0210

1 A. Okay. I've described it in several places.
2 It's a long answer. It's a 30-page affidavit. Do you
3 want me to supplement this with the affidavit? Or do
4 you want me to try to get it faxed here? Do you want

5 me to read the affidavit? It's -- it's longer than
6 that because the affidavit doesn't go through the --
7 some of the material I just covered. How would you
8 like that answer?

9 Q. I would like to know briefly in 50 words or
10 less if you can give me an overview of the scientific
11 method you use in drawing your conclusions about what
12 companies should have known?

13 A. I can't do that without being misleading.

14 Q. Does the scientific method you use have a
15 name?

16 A. Epistemology, medical epistemology.

17 Q. Do you have a degree in epistemology?

18 A. I don't think anybody gives a degree -- I
19 think the Sorbonne may give a degree in epistemology.
20 Otherwise, I don't think that there's a degree in
21 epistemology given by any U.S. universities.

22 Q. So no, you don't?

23 A. Well, I'm not sure it exists, but if it exists
24 it's at the Sorbonne and I don't have it.

25 Q. Did you review any air sampling done of the
0211

1 plaintiff's job sites?

2 A. I didn't review anything that's not here, and
3 there's no air sampling here that I -- unless I missed
4 it.

5 Q. So no, you haven't reviewed any air sampling
6 from the plaintiff's job sites?

7 A. Correct.

8 Q. I want to ask you a hypothetical.

9 A. Okay. Just before you continue, I have all
10 those things that you wanted. These are some of the
11 dust studies on exposures to pipe covering. These are
12 unpublished so we got them faxed in. I hate to deprive
13 the record of these, so maybe if we just want to take a
14 second and mark this, unfortunately titled OCF
15 Knowledge of Risk to Users, but generally applicable
16 since under Dartez it would be known to everybody. So
17 can we just mark this since you asked for it before and
18 I got it.

19 MS. NETTLE: We can mark it as the next
20 exhibit, 32.

21 THE WITNESS: Thanks. 32. And then the

22 same thing with the Johns-Manville inserts.

23 MS. NETTLE: Exhibit 33.

24 THE WITNESS: Why don't we just take a
25 second and make sure those get marked and put in the
0212

1 record. Very few people know about some of these
2 things.

3 Q. (BY MS. NETTLE.) I want to ask you a
4 hypothetical question. Assume Mr. Mitchell had the
5 exact same exposures that he testified to in his
6 deposition with the exception of he never worked around
7 an Elliott turbine. Can you tell me that had that been
8 the case, Mr. Mitchell would not have contracted
9 mesothelioma?

10 A. No.

11 Q. You can't testify to that?

12 A. Correct.

13 Q. So you can't say then that but for the
14 exposure to Elliott turbines or his work around Elliott
15 turbines, he would not have gotten mesothelioma?

16 A. Correct, I can only say that the exposure to
17 Elliott turbines was sufficient to cause his
18 mesothelioma and was a significant contributing factor
19 in the cause of his mesothelioma.

20 MS. NETTLE: Object to the nonresponsive
21 portion.

22 Q. You've talked earlier about some documents
23 regarding fiber release of components used in Elliott
24 turbines; do you recall that?

25 A. Yes.

0213

1 Q. Can you name for me --

2 A. Well, the turbine itself doesn't -- the
3 turbine itself -- it's only the parts of the turbine
4 that are -- asbestos parts that release. I don't think
5 you could say that the -- like the turbines consist of
6 parts, the whole thing is a turbine.

7 Q. Can you name for me any peer-reviewed studies
8 or epidemiological studies that you're relying on to
9 testify that components of Elliott turbines release
10 asbestos fibers?

11 A. Sure, that's what you just marked there as
12 exhibit -- what exhibit is that one?

13 Q. 32.

14 A. 32. Some of those are unpublished but then
15 were published, and then there's all those other
16 studies that I talked to you about before. Marr,
17 Fleischer Drinker, Dreessen, Merewether, Nicholson,
18 Balzer, Balzer and Cooper.

19 MS. NETTLE: All right. I'm going to
20 object to the nonresponsive portion.

21 Q. I'm specifically asking about peer reviewed or
22 epidemiological studies, not unpublished studies, not
23 nonpeer-reviewed studies. I want to know what
24 peer-reviewed literature or epidemiological studies
25 you've relied on in your testimony that components of
0214

1 Elliott products released asbestos fibers and what, if
2 any, amount of fibers were released.

3 MR. TAYLOR: Objection, compound.

4 A. Merewether 1930, Dreessen 1938 public health
5 reports 241, Fleischer Drinker 1946, Marr 1963,
6 Leathart 1964, Balzer, Balzer and Cooper 1967 and '68.
7 The Third Wave book New York Academy of Sciences 1991,
8 the shipbuilding proceedings Nicholson. Several
9 studies by Nicholson I don't remember all the years and
10 publication dates, between '68 and '74. That's all I
11 can think of. I'm kind of cutting it off at '74.

12 Q. You've already testified that you can't state
13 which of those are peer reviewed and which aren't,
14 correct?

15 A. No, as far as I know they're all peer reviewed
16 from peer-reviewed journals. I said that I can't tell
17 you whether they were actually peer reviewed or not.
18 On the face of them they're all peer reviewed. They
19 all come from journals that claim they're peer-reviewed
20 journals. In other words, if there was such a thing as
21 a peer-reviewed journal they were in them.

22 Q. Can you state for me any peer reviewed or
23 epidemiological study you've relied on about -- to
24 determine or estimate the fiber release from gaskets
25 that may have been used in Elliott turbines,
0215

1 specifically as to gaskets?

2 A. Sure, Longo studies and Millit studies and Lee
3 studies.

4 Q. What study specifically have you relied on?

5 A. There's published studies by Longo, Millit and

6 Lee.

7 Q. Can you name for me the studies?

8 A. I can't recall the specific citations.

9 Q. Can you name for me any peer-reviewed studies

10 about fiber release from packing that may have been on

11 Elliott turbines that you have relied on in forming

12 your opinions?

13 A. I think there's a Longo study that's published

14 and peer reviewed but I'm not positive.

15 Q. Can you give me the cite for that?

16 A. No.

17 (Dr. Egilman and Mr. Taylor confer.)

18 Q. I want you to describe for me the scientific

19 method you used in drawing your conclusions about what

20 companies in general should have known without an

21 extensive narrative. I want a brief summary of your

22 scientific method.

23 MR. TAYLOR: Object to the form of the

24 question. I think it's unfair to try to place those

25 restrictions on his answer.

0216

1 A. Why don't you repeat the question, let me

2 write that down. You can skip the brief part.

3 (Requested portion was read.)

4 A. I don't think I have a brief version.

5 Q. I want you to try and take a stab at it.

6 A. I don't want to do that. I want to answer

7 according to my oath, completely or not at all.

8 Q. Is the scientific method that you used

9 published in any peer reviewed or -- peer-reviewed

10 literature?

11 A. Well, you know, there are several processes,

12 all of which are published in peer-reviewed literature.

13 MS. NETTLE: Objection, nonresponsive.

14 Q. Is the scientific method you used in drawing

15 your conclusions about what companies should have known

16 in any peer-reviewed literature?

17 A. Yes.

18 Q. Which ones?

19 A. There's library science literature on how to

20 do library research, there's all of the literature that

21 I described about determining cause and effect
22 determinations, probably the most famous of which is
23 Hills Considerations in 1965. There's my paper
24 recently accepted on Daughbeir to be coming out in Food
25 and Commercial Law.

0217

1 There's the textbook, Modern Epidemiology
2 by Sandra Greenland and Rothman. There's the textbook
3 occupational medicine -- Occupational Epidemiology by
4 Monson. There's a paper in the American Journal of
5 Epidemiology called Causes by Rothman. There's a
6 series of papers by Miettinen. That's Olie, O-L-I-E
7 M-I-E-T-T-I-N-E-N. There's Popper's publications and
8 books. There's books by Feyerabund and articles by
9 Feyerabund, and by Canguilhem, Bachelard -- those are
10 two different people, French philosophers of science.
11 There's books by Sandra Harding and articles by Sandra
12 Harding. There are articles by Anne Fausto-Sterling.
13 There are articles by Jamie Robins in the American
14 Journal of Industrial Medicine. Numerous articles by
15 Sandra Greenland. The Seminal article probably is in
16 the American Journal of Public Health in 1998 dealing
17 specifically with issues that relate to cause/effect
18 determination and when it would be established that
19 that would be known.

20 There are my articles published in the
21 American Journal of Industrial Medicine and the cites
22 for them are on my CV and others. Particularly one
23 called Epistemology and Public Health which is a
24 commentary in the American Journal of Industrial
25 Medicine. That's the brief answer.

0218

1 Q. Okay. I want to know what the scientific
2 method was that you used for drawing your conclusion --
3 conclusions about what companies should have known
4 about the hazards of asbestos. However, I do not need
5 to know any scientific methods you used for researching
6 articles, for reading the articles, for understanding
7 the articles. I simply want to know how you made --
8 what scientific method you made to make the leap from
9 these articles and their existence and the dates they
10 were published to what companies should have known
11 about those articles; do you understand my question?

12 A. No, it makes no sense whatsoever to me.

13 Q. All right. I'm limiting my question. I'm not
14 asking about scientific method you used in finding
15 these articles; do you understand that?

16 A. Yes.

17 Q. Okay. And I'm not asking about any science or
18 scientific method you may have used to read the
19 articles or understand the articles; do you understand
20 that?

21 A. Yes.

22 Q. What scientific method do you contend that you
23 used to look at these articles and their dates of
24 publication and then conclude what companies should
25 have known about the hazards of asbestos, what is the
0219

1 scientific method?

2 A. You've told me not to use the scientific
3 method and then tell you the scientific method, I don't
4 know how to do that. I'm sorry, it's beyond me. You
5 mean there's 18 scientific methods that I relied on,
6 you don't want me to talk about any of those. You want
7 me to come up with a new one, I don't really understand
8 how I can do that.

9 Do you want to know how companies find
10 things out, I can talk about that. Generally the
11 question I answer in court is, could you compare the
12 information available to the medical and scientific
13 community with that available to companies? And then I
14 talk about basically the distribution of information,
15 and that's a library science method; plus it's based on
16 my experience and training with respect to consulting
17 for corporations and reviewing documents of
18 corporations. So that's the method to the extent
19 that -- that does overlap the other methods that you
20 didn't want me to talk about in how you limited the
21 question.

22 Truly I've had a lot of experience in
23 depositions I must admit that and I don't know how to
24 answer a question where you tell me that I can't use
25 the answer that I would normally use, you want a
0220

1 different answer to answer the question. I just don't
2 know how to do that.

3 MS. NETTLE: I'm going to --

4 A. I did the best I could.

5 MS. NETTLE: -- object to the

6 nonresponsive portion.

7 Q. I'm giving you every opportunity to answer my

8 question in a brief format without going on for 30

9 minutes like you did previously. And so I'm trying --

10 I'm not trying to ask you about every scientific method

11 you've ever used. I'm asking you, describe the

12 scientific method you used for this one part of the

13 conclusion, which is looking at these documents and

14 their publication and then concluding from that what

15 companies should have known. Is there some scientific

16 formula you can describe for me in making that

17 conclusion from that information?

18 MR. TAYLOR: Object to the form of the

19 question. Object to the sidebar, to asked and

20 answered. Let's move on.

21 Q. Can you describe that scientific method?

22 A. Yes.

23 Q. All right. Please describe the scientific

24 method used for that one conclusion, not for every

25 other conclusion that --

0221

1 A. That's a different question. I didn't say I

2 could do that. That's a different question. I don't

3 think I can do that. In order for me to say somebody

4 should have known something, I got to explain why it

5 should be knowable, okay.

6 I've got to explain what people at

7 different points in time relied on to determine

8 cause/effect relationships and the methodology, not now

9 but then about cause/effect relationships. And how

10 people did or did not except cause/effect relationships

11 then, not now, okay. And then I got to be able to

12 answer, from a library science perspective or from my

13 general training experience, how information got

14 transferred from place to place. And if you're going

15 to tell me I can't do either of those two, I cannot

16 answer the question.

17 MS. NETTLE: Objection, nonresponsive.

18 A. Well, good, it wasn't an answer. I was just

19 explaining why I couldn't answer the question.

20 Q. All right. So your statement is you can't
21 provide for me the scientific methodology you used to
22 draw that conclusion from the publication and the dates
23 of publication?

24 A. Not true.

25 MR. TAYLOR: Object to the question.

0222

1 A. I didn't say that at all. I've given you a
2 long answer, 27 minutes worth, according to the
3 gentleman on my left, about my methodology, okay, in
4 terms of determining in general my -- not even --
5 pardon me, it wasn't my methodology, it was my
6 training, the things that qualified me to know how to
7 do things. It wasn't even to talk about what the
8 methodology was. Okay. But without talking about
9 that, I can't talk in some vacuum about what was
10 available in the literature.

11 The question I generally answer at trial
12 is, what information was available in the medical and
13 scientific community to determine whether asbestos was
14 a hazard and could you compare that information to
15 information available to some company? But I mean, in
16 this case -- I mean, the easiest answer is the law,
17 okay. There's OSHA which went into effect in 1971 and
18 that covers the whole time period of this gentleman's
19 exposure, and companies should have known the law.

20 MS. NETTLE: Objection, nonresponsive.

21 Q. Is there a rate of error for your scientific
22 method?

23 A. Which part? There are different parts that
24 we've discussed.

25 Q. Any part for your scientific method in

0223

1 concluding what companies knew -- excuse me, including
2 what companies should have known. Can you identify a
3 rate of error for the scientific method you claim that
4 you used to draw those conclusions?

5 A. Explain what you mean by "rate of error,"
6 that's not the question I answer in court. You've
7 asked a different question. Explain what you mean by
8 rate of error.

9 Q. What is your understanding of what the term
10 rate of error is? Is that a scientifically recognized

11 term?

12 A. For frequentist studies only. Not for either
13 metaanalysis or combinations of different types of data
14 or conclusions about general cause and effect
15 relationships. There is no such thing as a rate of
16 error for any of those things.

17 Q. So is it true then that there's no rate of
18 error for the method you use to draw your conclusions?

19 A. No, there are different parts of the method
20 that I use of which there are rates of error. There
21 are rates of error in different parts of what I
22 described or what I didn't describe but what I use.

23 Q. What are the rates of error for the method you
24 use in determining what Elliott should have known?

25 A. There's no overall rate of error for that.

0224

1 That's not the question that I answer in court. What I
2 answer is, compare the information available to Elliott
3 with the information available to the general medical
4 and scientific community.

5 In this particular case the error rate is
6 whatever the rate is of companies -- there is no error
7 rate. The law was in 1971 that companies had certain
8 responsibilities to place warnings on products they
9 made that contained asbestos products. And the
10 warnings were specified, the recommendations about
11 monitoring were specified, that's a lot of the basis of
12 my opinion in this case.

13 MS. NETTLE: Object --

14 A. It's not a error rate phenomenon except to the
15 extent that the law's got an error rate associated with
16 who knows about it. I've never heard of such thing.

17 MS. NETTLE: Object to the nonresponsive
18 portion.

19 Q. Are there any other specific opinions you plan
20 to testify to at trial pertaining specifically to Marty
21 Mitchell and Marty Mitchell's case that we have not
22 discussed so far?

23 MR. TAYLOR: Object to the form of the
24 question.

25 A. I don't have any plans to testify about

0225

1 anything at trial. I'm prepared to testify about all

2 these things. And whatever questions come out, if I
3 have an answer based on my review of the materials, I
4 give the answer, if I don't, I'll say I don't know.

5 Q. And my question --

6 A. I don't have a specific program. I haven't
7 met with Mr. Kaeske to discuss my testimony. I told
8 you before what he asked me to testify about or be
9 prepared to testify about, that's what I'm prepared to
10 testify about then and now. What I'm going to testify
11 about within that subset I have no idea.

12 Q. Are there any other areas you've been asked to
13 testify to specific to Mr. Mitchell that you have not
14 told me about?

15 MR. TAYLOR: Object to the form.

16 A. Not that I can recall.

17 Q. All right. I'm going to give these other
18 attorneys a chance to ask some questions. I may have
19 some more.

20 THE WITNESS: I think we're done. We're
21 done, right?

22 MR. TAYLOR: First, how much time? Is
23 there even any time left?

24 THE REPORTER: Five hours and forty-five
25 minutes is what we --

0226

1 THE WITNESS: We're all done, right?

2 Thank you, folks. It's been a pleasure.

3 MS. NETTLE: Does anyone else have any
4 questions?

5 Okay.

6 THE WITNESS: No, it's not a ship of
7 fools.

8 (Deposition concluded at 5:15.)

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CHANGES AND SIGNATURE

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0228

1 I, DR. DAVID EGILMAN, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5
6 _____
 DR. DAVID EGILMAN

7
8 THE STATE OF _____)

9 COUNTY OF _____)

10 Before me, _____, on
11 this day personally appeared DR. DAVID EGILMAN, known
12 to me (or proved to me under oath or through
13 _____) (description of identity
14 card or other document) to be the person whose name is
15 subscribed to the foregoing instrument and acknowledged
16 to me that they executed the same for the purposes and
17 consideration therein expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, _____.

20
21
22

NOTARY PUBLIC IN AND FOR
23 THE STATE OF _____

24
25
0229

1 CAUSE NO. 02-09281

2 MARTY MITCHELL, _____) IN THE DISTRICT COURT
PLAINTIFF, _____)

3 _____)
VS. _____) 134TH JUDICIAL DISTRICT

4 _____)
AMETEK, INC., et al., _____)
5 DEFENDANTS. _____) DALLAS COUNTY, TEXAS

6 REPORTER'S CERTIFICATION
DEPOSITION OF DR. DAVID EGILMAN
7 MAY 21, 2003

8 I, Jennifer Hoodenpyle, Certified Shorthand
9 Reporter in and for the State of Texas, hereby certify
10 to the following:

11 That the witness, DR. DAVID EGILMAN, was duly sworn
12 by the officer and that the transcript of the oral
13 deposition is a true record of the testimony given by
14 the witness;

15 That the deposition transcript was submitted on May
16 28, 2003 to the witness or to the attorney for the
17 witness for examination, signature and return to me by
18 June 20, 2003;

19 That the amount of time used by each party at the
20 deposition is as follows:

21 MS. NETTLE.....05 HOURS 45 MINUTES
22 That pursuant to information given to the
23 deposition officer at the time said testimony was
24 taken, the following includes counsel for all parties
25 of record:

0230

1 Attorney for the Plaintiff, Mr. Mark Taylor;
2 Attorney for the Defendants, Beazer East, Inc. and
Elliott Turbomachinery Co., Ms. Amy E. Nettle;
3
4 Attorney for the Defendant, American Standard,
Inc., Mr. Stephen K. Guidry;
5 Attorneys for the Defendant, General Electric
Company, Mr. Timothy McGowan and Ms. Kay Andrews;
6
7 Attorney for the Defendants, Viacom & Foster
Wheeler Energy Corporation, Mr. Ivan A. Gustafson;
8 Attorney for the Defendant, Tuthill Corporation,
Ms. Joanne Early;
9
10 Attorney for the Defendant, Mallinckrodt, Inc.,
Mr. Michael L. Blakeney;
11 Attorney for the Defendants, Industrial Holdings
Corporation f/k/a the Carborundum Company,
12 Mr. Kurt W. Greve;
13 Attorney for the Defendants, Quigley Company &
Pfizer, Inc., Mr. Larry W. Thorpe;
14
15 Attorney for the Defendant, Monsanto Company,
Mr. Lawrence E. Goldenthal;
16 Attorney for the Defendants, Certainteed
Corporation, Foseco, Mr. Todd J. Suddleson;
17
18 Attorney for the Defendant, Corhart Refractories
Corning, Inc., Mr. Mark S. Scudder;
19 Attorney for the Defendant, Oakfabco, Inc.,
Mr. Nicholas S. Baldo.

20

21 I further certify that I am neither counsel for,
22 related to, nor employed by any of the parties or
23 attorneys in the action in which this proceeding was
24 taken, and further that I am not financially or
25 otherwise interested in the outcome of the action.

0231

1 Further certification requirements pursuant to Rule
2 203 of TRCP will be certified to after they have
3 occurred.

4 Certified to by me this 28th day of May, 2003.

5

6

7

Jennifer Hoodenpyle, CSR, RPR

8 Certificate No. 7071

Expiration Date: 12/31/04

9 600 North Pearl Street, Suite 640

Dallas, Texas 75201

10 (214) 220-2449

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2

3 The original deposition was/was not returned to the
4 deposition officer on _____;

5 If returned, the attached Changes and Signature
6 page contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered
8 to Ms. Amy Nettle, Custodial Attorney;

9 That \$_____ is the deposition officer's
10 charges to the Defendant, Beazer East, Inc. and Elliott
11 Turbomachinery Co., Inc. for preparing the original
12 deposition transcript and any copies of exhibits;

13 That the deposition was delivered in accordance

with Rule 203.3, and that a copy of this certificate
was served on all parties shown herein on and filed
with the Clerk.

Certified to by me this _____ day of
_____, 2003.

Jennifer Hoodenpyle, CSR, RPR
Certificate No. 7071
Expiration Date: 12/31/04
600 North Pearl Street, Suite 640
Dallas, Texas 75201
(214) 220-2449