IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CLAUDE CIMINO, et al.,

Plaintiffs,

vs. CIVIL ACTION NO. B-86-0456-CA

RAYMARK INDUSTRIES, INC., et al.,

Defendants.

DEPOSITION OF: J. CHRISTOPHER WAGNER

DATE: May 30, 1990

TIME: 9:10 AM

LOCATION: Stafford Hotel
London, England

TAKEN BY: Counsel for the Plaintiffs

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JOHN CHRISTOPHER WAGNER, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRICKMAN:

Q. Could you state your full name for the record, sir?

A. John Christopher Wagner.

Q. And you pronounce it Wagner?

A. Wagner.

Q. Dr. Wagner, could you tell me where you live, sir?

A. At the present moment, I live in Dorset in a place called Wales.

Q. And about how far is that from London?

A. About 150 miles.

Q. And did you take a train or a plane in last night?

A. I took a train from Cardiff.

Q. And are you presently married, sir?

A. I am.

Q. And are you presently employed?

A. Self-employed doing a certain amount of consulting work.

Q. Tell me what you mean by that,

sir.

A. Well, I am advising on tumors associated with asbestos, asbestos diseases, and also on some of the experimental work I did earlier.

Q. I'm sorry, what experimental work?

A. Experimental work I have done previously.

Q. Are you employed or do you work for any particular group or company or anything of that nature?

A. Not directly employed, but I do do work for certain people.

Q. You are not employed by the English government in any way at this time; is that correct?

A. Only on a very small travel grant.

Q. I'm sorry; it must be my ears, on a what?

A. They give me a small travel grant to go up to Cardiff once a month to consult on the experimental work that I started doing, and they are continuing to do, the Health and Safety Executive.

Q. And you continue to monitor that

work, and they don't pay you for it other than to pay your travel expenses?

A. That's correct.

Q. What sort of work is being done at Cardiff that you are monitoring?

A. Mainly to find out the amount of asbestos in various types of lungs of people with mesotheliomas in whom there is no evidence of asbestos exposure, comparing that with exposed cases. And also going back into the experimental animals to find out how the dose in the animals is equivalent to what we are seeing in man.

Q. So apparently you are looking at individuals who have no known exposure to asbestos and counting the number of asbestos fibers in their lungs?

A. Well, typing the fibers and the quantitation and type of fibers, size of the fiber.

Q. And are these individuals who have not been exposed who have any sort of disease?

A. These are mainly people with mesotheliomas of the pleura and peritoneum.

Q. These people have mesothelioma, do not have a known exposure history to asbestos, and

you are counting, however, the number of asbestos fibers in their lungs?

A. And also getting people to check up to make quite certain that they haven't had exposure.

Q. Have you found any individuals who have absolutely no asbestos fibers in their lungs?

A. No.

Q. Okay. In those individuals who have mesothelioma, no history of exposure to asbestos or known history of exposure to asbestos, you have nevertheless found asbestos fibers in their lungs?

A. Yes.

Q. What kind of asbestos fibers have you found in general in these individuals?

A. The three main types of asbestos and Tremolite. Chrysotile, Crocidolite, Amosite, Tremolite.

Q. So you find basically those asbestos fibers that are used commercially?

A. Yes, all the ones that are used commercially.

Q. You find them; is that correct?

A. Yes.

Q. Do you attribute in those cases the mesotheliomas to the asbestos fibers in their lungs?

A. No. I think we are trying to find the level between the ordinary people with urban or country exposure, countryside exposure, against the people who have had industrial exposure.

Q. You would agree with me that asbestos can cause mesothelioma, wouldn't you?

A. Certainly the amphiboles cause mesothelioma.

Q. Would you agree with me that large amounts of Chrysotile may be able to cause mesothelioma, in your opinion?

A. I think this is fairly doubtful, because Tremolite seems to occur in practically all these cases.

Q. Let me ask you this: Why is it then that the asbestos that you are finding in these people's lungs isn't the cause of their mesothelioma?

A. I think one realizes that if it was the cause of the mesothelioma, all of us would have mesothelioma, which is far from the case.

Q. That doesn't make sense to me,

sir. Not everybody that is exposed to asbestos gets asbestosis, do they?

A. No.

Q. Not everyhody that is exposed to asbestos gets asbestos lung cancer, do they?

A. No. But the people with severe exposure would.

Q. Everyhody who has a severe exposure to asbestos would get those diseases?

A. No, but is liable to get those diseases.

Q. Is liable to?

A. Yes.

Q. So if somebody has a heavy exposure to asbestos, it is more probable than not that they would get an asbestos disease related to that?

MR. GARRARD: Wait a minute. I object to the form of your question. That is not what he said. He didn't say heavy exposure. He didn't say more likely than not they are going to get the disease.

MR. BRICKMAN: I want to clarify. That's exactly what I want to do.

BY MR. BRICKMAN:

Q. What type of exposure were you referring to? I thought you said heavy exposure.

A. Yes. Industrial exposure.

Q. Yes, industrial exposure. So, in your opinion, everybody who has an industrial exposure more likely than not will get one of those diseases.

MR. GARRARD: Object to the form of the question. That's not what he said.

MR. BRICKMAN: That's what I'm asking him.

THE WITNESS: No. Is more likely to get the disease than people who haven't had that exposure.

BY MR. BRICKMAN:

Q. Well, obviously. If you are not exposed to asbestos, you are not going to get asbestosis, are you?

A. This is the problem. There must be a limit somewhere along the lines where the exposure is -- exposure is that of the general population who, as far as we know, none of these diseases occur.

Q. I'm not quite sure I understand that. Apparently we have some people in the

general population who have minimal exposure to asbestos who have mesothelioma, don't we?

A. The exposure, as far as we can see, the exposure they had was that of the general population of the area. No greater, no less.

Q. Maybe even that minimal exposure can cause mesothelioma; have y'all considered that concept?

A. We have taken it down -- still working the hypothesis. We have taken it down to certain limits such as if they got less than one million amphibole fibers of the correct size ratio; they probably won't get the disease.

Q. But these people that you have looked at, they had less than 1 million amphibole fibers?

A. Yes.

Q. But they got the disease, didn't they?

A. Oh, yes. The disease -- the other thing is the disease occurs from causes other than asbestos exposure, and we also collected nearly 100 cases which were occurring before 1900 which would suggest that was before asbestos exposure occurred. So it is a natural incidence of the

disease.

Q. You have 100 cases of mesothelioma you have collected and examined that occurred before 1900?

A. This is going on as far as we can see on the reported cases and on the evidence supporting their claim.

Q. Wait a minute. Wait a minute. Have you looked at tissue of people who died before 1900?

A. No.

Q. What do you base that on?

A. This is based on the reports.

Q. On reports. And did they call it mesothelioma?

A. No, talking about endothelioma of the pleura.

Q. And so in every case they called it endothelioma of the pleura, you took that to be mesothelioma?

A. No. The cases are being reviewed, and only the ones being reviewed are accepted.

Q. Who has looked at this tissue?

A. The group in Germany. A group in France, a chap called Roberts at the Mayo Clinic.

Q. And he has looked at people who died in 1900 and said there are 100 cases?

A. He worked on the reports. The people who have seen the actual tissue would be the people in France, in Germany and Britain and the States in the earlier days.

Q. Has anybody currently doing research today looked at that tissue and said, these are mesotheliomas?

A. No, not as far as I know.

Q. You are simply basing it on reports in the medical literature or old autopsy reports where they said, endothelioma; is that correct?

A. Yes. And their grounds for giving it.

Q. You are not basing it if they said pleural carcinoma, are you?

A. No.

Q. Okay. And as far as you know, all 100 cases said endothelioma; is that correct?

A. Or pleural tumor, yes.

Q. If it said pleural tumor, are you assuming it's a mesothelioma?

A. No. They give their description.

Q. And what description did they give

for pleural tumor?

A. These were descriptions of a tumor arising in the pleura, and they also had fairly good pictures in some of the cases showing the type of the tumor.

Q. Tell me who has looked at these from France and Germany, sir, or which article you're referring to?

A. No. There are two big theses. I haven't got the actual reference.

Q. Are they published?

A. No. They were university theses, the two main ones.

Q. By medical students or by professors or what?

A. By -- they were collected by people doing their theses for higher degrees, but they were qualified.

Q. So these are people who have medical degrees who are in graduate school, postgraduate school?

A. Postgraduate school. But the list of the cases obviously are being done by the --

Q. And you have looked at pictures that they have put in their theses of these

people?

A. I looked at some of the pictures and the articles.

Q. Okay. And these articles were not articles but thesis work, unpublished?

A. They referred to -- this was a collection of the -- these chaps collected the papers and checked on the materials.

Q. And they referred in their thesis or theses, they looked in their theses at other articles which you yourself examined?

A. I have examined some of them. Not all of them.

Q. Which ones have you examined?

A. I examined some of the early British ones.

Q. Just name one or two for me, sir?

A. Offhand, I'm afraid I can't.

Q. You can't name any?

A. No. I'm trying to think of this one, but I'm afraid I can't. It's still part of work to be done.

Q. How do you know these people weren't exposed to asbestos?

A. Because one assumes that by 1900

there were too few -- asbestos was right in its infancy, and certainly there was practically no asbestos being used in Europe and a small amount in the states.

Q. Just so I know, why do you believe asbestos wasn't being used in Europe prior to 1900?

A. If it was used, it was used in very, very small quantities.

Q. And how do you know whether these people were not exposed to it?

A. As far as one can tell, going through the history that is available, the occupation didn't suggest this.

Q. So it even had their occupations before their death?

A. Not all of them.

Q. Some of them?

A. Some of them.

Q. Do you have this thesis at your home?

A. Yes.

Q. May I ask you to provide a copy to Mr. Garrard --

MR. BRICKMAN: Let me ask you this,

Henry. If he is not going to voluntarily do it, let me know, and I'll get a subpoena.

MR. GARRARD: I haven't seen it. I don't know what it is. I don't know if you're entitled to it, so I am not going to agree, nor is he going to agree.

MR. BRICKMAN: All right.

(This page contains information to be supplied by counsel and/or the deponent.)

BY MR. BRICKMAN:

Q. I don't know how to issue a subpoena in England, but when you come to the States, we will have one for you, Doctor.

MR. BRICKMAN: Just for the record, Henry, you will not agree for the doctor to produce it to me?

MR. GARRARD: I don't know what it is, haven't seen it, and I am not going to voluntarily agree nor allow him to voluntarily agree to produce anything that I don't know what it is or haven't seen, nor do I know it has any relevance at all to what his testimony is about in these three cases.

MR. BRICKMAN: Let me ask you this, Mr. Garrard, while we are on the record. I know

you are not the doctor's lawyer. What right do you have to tell him not to produce it? What can it hurt you?

MR. GARRARD: I don't know what it is. I'm not under oath.

MR. BRICKMAN: Lawyers don't have to be under oath to tell the truth; they are expected to.

MR. GARRARD: I don't know what it is, and I am not going to agree to something I don't know what it is, nor would you.

BY MR. BRICKMAN:

Q. Doctor, tell me specifically what it is you have.

MR. GARRARD: Excuse me, tell me --

BY MR. BRICKMAN:

Q. This thesis. Tell me what it is.

A. A copy of a German thesis and a French thesis.

Q. And do you know the title of these?

A. I'm afraid not offhand.

Q. Do you know the names of any author in it?

A. I would have to look this up.

Q. Do you have an English translation

or just the German and French version?

A. The German and French version.

Q. Is there an abstract with it of some sort in English?

A. No, there isn't. I got the occupations of the German cases translated.

Q. Do you speak German?

A. No.

Q. Who interpreted it for you?

A. This was interpreted by -- as far as it has been interpreted, by a woman who teaches German.

Q. Did she write out the interpretation for you?

A. Wrote out the occupations, yes. But most of these -- most of these cases occurred also in Roberts' article from the Mayo Clinic.

MR. GARRARD: I do know which one that is, Mr. Brickman.

MR. BRICKMAN: I'm glad to hear that, Mr. Garrard.

BY MR. BRICKMAN:

Q. So you haven't read the German thesis, then?

A. No. I checked the names against

the other two.

Q. But you have it in your possession?

A. Yeah.

Q. What university did it come from?

A. Now that's got me.

Q. How about the French thesis, have you read that one?

A. Yes. That's from Paris.

Q. Okay, from Paris. And do you remember the name of any doctor on that thesis?

A. No.

Q. And you understand French well enough to read it yourself?

A. Yes.

Q. Now, have you ever come across any case of mesothelioma, Doctor, where you did not find asbestos fibers upon proper examination?

A. Personally, no.

Q. And do you know whether there was any examination of these hundred cases that you referred to before 1900?

A. No, there was none.

Q. No examination of the lungs to see if there were asbestos fibers?

A. No.

Q. The 100 cases you have referred to, did they come from different parts of the world, or were they limited to certain countries?

A. They were reported, as far as I remember, mainly from France and Germany and Britain. A few from the States.

Q. And is it your opinion that France, Germany and Britain weren't using asbestos prior to 1900 at all, and in the United States just a little bit was being used? Is that correct?

A. I'll put it the other way around. As far as I know, Chrysotile was being used in the States, but the amounts of material coming into Europe by 1900 wouldn't be sufficient time for the tumors to develop if they were associated with asbestos.

Q. All right. Just want to clarify it. So you are now saying there was asbestos in Europe before 1900, but not sufficiently enough time prior to 1900 for a proper latency, in your opinion; is that correct or incorrect?

A. Very small amounts were coming in, yes.

Q. So let's clarify. There was asbestos in Europe prior to 1900?

A. As far as I know, 1890.

Q. 1890 is the cutoff date?

A. Yes.

Q. Was there any asbestos here prior to 1890, in your opinion?

A. Not that I know of.

Q. How about the United States?

A. I think slightly. A very small -- we know about minimal amounts being used in the middle ages, but minimal, really.

Q. Doctor, in your opinion, are there known causes of mesothelioma other than asbestos?

A. Claimed. I think the only one that really comes out clearly is radiation.

Q. So the only -- I don't mean to cut you off. Let me just clear it up, and you can add on whatever you want.

So the only other thing that you know of or you believe to a reasonable degree of medical certainty that can cause mesothelioma other than asbestos is radiation?

MR. GARRARD: Wait a minute.

MR. BRICKMAN: Just object to the form. Object to the form, Henry, and give me a break.

MR. GARRARD: I object to the form, because he said the only one that has come out clearly.

MR. BRICKMAN: I'm trying to clarify.

MR. GARRARD: But you are taking and restating things in a positive fashion that he hasn't said.

MR. BRICKMAN: That's why I'm asking it again. I want to clarify that, Mr. Garrard.

MR. GARRARD: I know, but I wish you would clarify it within the parameters that he said as opposed to something that serves your purposes more beneficially than what he said, and I object to the form.

MR. BRICKMAN: Let's do this, Mr. Garrard. Why don't you object to the form of the question, and I agree you can add the grounds later, so you don't have any problem telling the witness what to say.

MR. GARRARD: I am not telling the witness what to say. I am trying to, as best I can in my meek way, to keep you from making statements that say, so what you just said, Doctor

is, when that is not what I understood the doctor to say. If you simply would reask your questions in a fashion that fit what his answer was, then I wouldn't have to object.

BY MR. BRICKMAN:

Q. Doctor, to a reasonable degree of medical certainty, what other known causes of mesothelioma are there besides asbestos exposure?

A. Well, there is exposure to Erionite fiber. Radiation treatment seems to be the other one that is fairly clear. Obviously, like any other -- there must be a lot of causes we don't know.

Q. For all we know invaders from space are coming down and zapping us with ray guns. It could be anything; is that correct?

A. No. There are a lot of causes which we have gotten out of the course.

Q. But the only ones you would attribute mesotheliomas to would be asbestos exposure, Erionite and radiation; is that correct?

A. That's correct.

Q. What kind of radiation are you referring to?

A. Mainly on previous radiotherapy.

Q. So if somebody has some sort of disease you're referring to, and they get some sort of radiation treatment for it, that's what you're referring to?

A. Yes.

Q. You are not referring to somebody who goes in and gets chest x-rays or x-rays of a broken leg?

A. No. No.

Q. Okay. And about how many cases of radiation mesotheliomas are you aware of?

A. I think about -- a recent article has been written on this. I think he refers to about five other cases, about six cases.

Q. Six cases. And which article are you referring to, sir?

A. This is an article which is about to appear in Thorax.

Q. About to appear?

A. Yeah.

Q. And whose article is it?

A. It's been written from Israel.

Q. Okay. And who is the author of this soon-to-appear article?

A. I don't know.

Q. How do you know about the article?

A. I was asked to referee it.

Q. To referee it. That means to see if it makes sense?

A. Yes.

Q. And who asked you to referee it?

A. The journal.

Q. Who specifically on the journal?

A. I think it was Dr. Allen Gibbs who is one of the editors.

Q. So Dr. Allen Gibbs is somebody who you have done some work with in the past?

A. Yes.

Q. And he, in fact, is a witness in these cases for Mr. Garrard, isn't he?

A. Yes.

Q. And he asked you to review this article from Thorax?

A. For Thorax.

Q. Did he say anything about the article?

A. No.

Q. Just said I want you to referee it, nothing else?

A. Nothing else.

Q. And this article said there were six cases of radiation therapy mesotheliomas?

A. Described it.

Q. And they had no asbestos exposure?

A. No asbestos exposure.

Q. Were any of them men?

A. The main case was a woman, I think.

Q. One was a woman?

A. I think there were some men in it. The ones he mentioned, I think there were some men among those.

Q. You say there is a main case. Do they mostly talk about one case in that article?

A. No, the article is mainly on the one case, but he quotes the others from the literature.

Q. So apparently he discusses in that article, the author we're referring to, one case in particular; and he says he has found in the literature four or five other cases?

A. Four or five other cases.

Q. Have you seen those four or five other cases in the literature?

A. No.

Q. Dr. Wagner, let me ask you to

assume somebody has a mesothelioma, and they had an occupational exposure to asbestos. Would you then state that the most likely cause of that mesothelioma was the asbestos exposure?

A. I think it would depend upon the severity of the exposure. Also the estimation of the amount of asbestos in the lungs, if it can be done.

Q. Well --

A. If the tissue is available.

Q. If the person had an occupational exposure to asbestos for two or more years, let's say, and you couldn't do a study to see how many fibers there were, but you had a mesothelioma, would you then say that the most likely cause of that mesothelioma was asbestos exposure?

MR. GARRARD: Object to your hypothetical, because I do not believe when you say, quote, occupational exposure for two or more years, that you give him factual parameters with which to answer that question in anything more than a speculative fashion. Object to the form.

BY MR. BRICKMAN:

Q. Go ahead, Doctor.

A. It would depend upon the intensity

of the exposure and also on the type of fiber to which he was exposed.

Q. Well, assume the intensity was sufficient for your purposes. What do you mean by the type of fiber he was exposed to, then?

A. It would have to be amphibole fiber.

Q. If he had amphibole fiber, then would you attribute the mesothelioma to his amphibole asbestos exposure?

A. We're saying a fairly intense exposure, yes.

Q. So the answer would be yes, you would?

A. One would consider it, yes.

Q. No, not one would consider it. Would it not be the most likely cause?

A. Well, the timing afterwards would have to fit.

Q. Latency you're referring to?

A. Yes.

Q. And if the latency fit, would you then say it was most likely due to asbestos? Yes?

A. Intense exposure to amphibole asbestos for a two-year period, and he developed a

tumor more than 20 years later, one would consider it, yes.

Q. No, no, not one would consider it.

MR. GARRARD: Wait a minute.

BY MR. BRICKMAN:

Q. I'm asking you if it is the most likely cause.

MR. GARRARD: Wait a minute, Mr. Brickman, the doctor is entitled to answer the question in whatever fashion he wants to. When he says one would consider it, that seems to be the terminology he is using. That doesn't entitle you to try to force him to use your terminology, and I object to that.

BY MR. BRICKMAN:

Q. Is it the most likely cause, Doctor?

A. It would be, yes.

(Whereupon, an off-the-record conference transpired.)

(Whereupon, the Court Reporter read the question commencing on page 31 line 17 and the answer concluding on page 31 line 19.)

BY MR. BRICKMAN:

Q. Now, let's talk about latency for a

minute, Doctor. You just said if it were a 20-year latency period. Now you are aware that shorter latency periods cause mesotheliomas, aren't you?

A. They have been claimed after 15 years, yes.

Q. Haven't you seen them shorter than that?

A. No.

Q. Never?

A. No.

Q. So the shortest latency period you have ever heard of was 15 years?

MR. GARRARD: No, you asked him if he had ever seen them.

BY MR. BRICKMAN:

Q. Okay, heard of or ever seen, Doctor?

A. Obviously there have been shorter ones claimed. Leave out the childhood mesotheliomas which seem to be not associated with asbestos and different causes of the tumor. The tumor would be unknown.

Q. So the shortest latency period you have seen in the literature or seen yourself is 15

years?

A. Yes.

Q. Doctor, let me give you a hypothetical, sir. Let me ask you to assume that somebody has an exposure to amphibole asbestos of a sufficient intensity to satisfy your criteria but that the latency period was less than 15 years. Would you then be of the opinion to a reasonable degree of medical certainty that that asbestos exposure was not the cause of the mesothelioma?

MR. GARRARD: Wait a minute. Just a minute. I object to your hypothetical, because you are not giving the doctor enough information about which to make a reasonable conclusion, number one, and you are trying to set up some general question, perhaps, because you have some other case in mind. I don't know.

But that has nothing whatsoever to do with these three cases about which he is here to testify. And I object to that, further. But to just ask the hypotheticals you have asked is not giving him enough parameters to come to any reasonable conclusion.

BY MR. BRICKMAN:

Q. Go ahead, Doctor; you can answer, please.

MR. GARRARD: Doctor, if you have sufficient information with which to answer the question, you can answer it.

THE WITNESS: I don't know sufficient information.

BY MR. BRICKMAN:

Q. What are you missing?

A. Missing the latency or elapsed period which one feels essential to developing the tumor.

Q. That's what I'm trying to get at. Your opinion would be that no matter what the exposure was, even if it was sufficient to cause a mesothelioma, you would not attribute that mesothelioma to asbestos because it was shorter, the latency period was shorter, than 15 years?

A. Well, I think this is a hypothetical question.

Q. Yes, sir. Is that correct?

MR. GARRARD: I again object, because that is not what he said, number one. And number two, he doesn't have enough information with which to answer such a hypothetical.

BY MR. BRICKMAN:

Q. Well, doctor if you don't have enough information -- is that what you're saying, you don't have enough information?

A. What I'm saying is that as far as I know, the latest period that has been accepted is 15 years. This becomes a never ending question. If you accept 15, would you accept 13, would you accept 14?

Q. That's what I'm asking; would you accept 14?

A. I still feel I would like to have 15 years.

Q. But would you accept 14?

A. This would be a unique experience.

Q. But you would accept it?

MR. GARRARD: He didn't say he would accept it.

MR. BRICKMAN: He said a unique experience. That means a unique experience he would accept.

MR. GARRARD: He didn't say that.

THE WITNESS: No. What I was saying, this is a situation which as far as I know has not arisen. There have been a few cases

claimed less than 15. Mostly they have been shown not to be mesotheliomas.

Q. Would you accept a 14-year latency period?

A. If there was sufficient asbestos in the lungs and there was the right type, yes, I am afraid I would.

Q. And would you accept even lower years for a latency if there was sufficient asbestos fibers in the lung and the right fiber type?

MR. GARRARD: Doctor -- Mr. Brickman, I object.

MR. BRICKMAN: Glad you're talking to me instead of him.

MR. GARRARD: I object to your continuing hypothetical, because I do not believe the doctor has enough information with which to go on down the road with you to a never ending thing. I think that's an unfair question to the doctor to continue that.

I also think it has nothing whatsoever to do with the cases that we are here about today. I have no desire to prolong this deposition to the depths to which one might take

it into the North Sea if we're going to continue along this type of track and would ask you to please give that some consideration.

But I do object to continuing this, because I think you are, perhaps not purposely, but you are placing the doctor in a position without adequate information that is not a fair position.

MR. BRICKMAN: I want to be fair to the doctor. I want to give him adequate information. And all I want to know is what's the shortest he would go for latency period if there was sufficient exposure and sufficient number of fibers, what's the lowest you would go for latency period, Doctor?

MR. GARRARD: Doctor, if you can answer the question, answer the question, but I do ask you not to speculate.

THE WITNESS: When I say 15, that's the latest that has been accepted by the courts in this country.

BY MR. BRICKMAN:

Q. Courts in this country?

A. And I have got no evidence of cases occurring with a less latent period that genuinely

turned out to be a mesothelioma.

Q. I am not concerned about the courts in this country, not to be disrespectful. If I were to give you examples in the United States of latency periods in the United States where the courts have accepted that, would that change your opinion?

MR. GARRARD: I sure hope not, Doctor.

THE WITNESS: No.

BY MR. BRICKMAN:

Q. What difference does it make with the courts?

MR. GARRARD: He didn't say the courts. He said that he had seen, either.

BY MR. BRICKMAN:

Q. Well, he tossed out the courts of England, that that had some significance?

A. No. The latest, where a person put forth the statement that the mesothelioma was due to asbestos after a 15-year latency period.

Q. You heard this from who?

MR. GARRARD: I think he is talking not an individual; I think he is talking the lowest he has heard of in general.

BY MR. BRICKMAN:

Q. Is your interpreter correct?

A. Yes.

Q. And that's the lowest you have seen in the medical literature; is that correct?

A. Yes. That's the lowest I have accepted.

Q. You have accepted, okay. Have you seen in the medical literature reports of less than 15 years?

A. Yes. There was a terrific argument about a case with less than one year's exposure.

Q. And did you not accept that?

A. No.

Q. Why not?

A. Because the tumor turned out not to be a mesothelioma.

Q. Have you heard or seen any other reports in the medical literature of less than 15 years other than the one you just referred me to?

A. I have seen claims, yes, but I don't know if they are authentic.

Q. Do you have any reason to dispute their authenticity?

A. Well, one would like to see the

tissue of the background and find out more about the exposure.

Q. But do you have any reason to dispute their authenticity other than the fact that you haven't seen it yourself?

A. No. But as I said, these cases lack the statement of the amount of exposure.

Q. How much exposure do they have to have for you to be satisfied?

A. I would say that as far as we go, this is purely -- the work that we are doing would be 1 million amphibole fibers of the specific size -- in the specific size range of a diameter of less than 0.25 microns and a length of greater than 5 microns.

Q. In any of the cases you have examined for Mr. Garrard out of the Texas group that you have seen, did you count the number of asbestos fibers?

A. No. The tissue wasn't available for doing this.

Q. Are you in any way disputing any of those cases on the basis that there wasn't sufficient exposure? Let me clarify that question.

Are you disputing the diagnosis of mesothelioma in any of the three cases on the grounds that there wasn't sufficient exposure?

MR. GARRARD: The diagnosis itself?

BY MR. BRICKMAN:

Q. The diagnosis itself?

A. No. The diagnosis was on the histology and the information received from the United States.

Q. So in those cases you have seen from Texas, you are assuming that there was sufficient exposure to cause a mesothelioma.

MR. GARRARD: That's not what he said.

MR. BRICKMAN: I want to ask him that.

MR. GARRARD: I know, but you are making the grand statements, Mr. Brickman, that he hasn't said. He simply said in response to your question that exposure was not the basis for disputing the diagnosis --

THE WITNESS: These were histological. These were the diagnoses, were they mesotheliomas or not. Three of the cases they

were definitely mesotheliomas.

BY MR. BRICKMAN:

Q. Do you know anything about the exposures in these three individuals?

A. Very little.

Q. Excuse me. I didn't mean to interrupt you, Doctor. Go ahead and finish.

MR. GARRARD: Wait a minute. He is confused. He is confused, because he is not aware that what you are talking about right now is Harris, McBryde and Warrick.

That's all we're talking about, Doctor, is Harris, McBryde and Warrick. That's what he is asking you about is just those three cases.

BY MR. BRICKMAN:

Q. Let me then clarify. Have you looked at other cases for Mr. Garrard other than those three out of Texas?

A. I have looked at another three cases, but purely on histological grounds.

Q. You have looked apparently at six cases for Mr. Garrard?

A. Yes.

Q. Out of which only three are you

going to be testifying in?

A. Yeah.

MR. GARRARD: Well, while we are talking about that, I have told you before we came over here that he has looked at the Gray case, and that there is more material going to him about the Gray case. And he will not be deposed about that case today, because I don't know what he is going to do in that case until he has gotten everything.

And as you recall, we agreed that we will do a telephone deposition at some point. So I don't want to go into that case because he is not through, and he is not being offered in the other cases.

MR. BRICKMAN: Can I ask him which cases?

MR. GARRARD: No. Let's get to these cases, Mr. Brickman, instead of wasting time.

(Whereupon, an off-the-record conference transpired.)

MR. GARRARD: Doctor, let me say this to you. At any time you need to take a break, you feel free, because this is not an

endurance process.

BY MR. BRICKMAN:

Q. Absolutely, Doctor. And I'm sorry I didn't tell you that. Whenever you want to stand up, go to the bathroom, get something to drink, take a lunch break, you tell us.

MR. GARRARD: We are going to get through by lunch I feel sure.

(Whereupon, an off-the-record conference transpired.)

BY MR. BRICKMAN:

Q. With regard to the three cases we're looking at today, Mr. Harris, Mr. McBryde and Mr. Warrick, are you in any way disputing the diagnoses of mesothelioma on the basis of lack of sufficient exposure?

A. Not at all. Not on the basis of that.

Q. Well, when you say not now...

MR. BRICKMAN: Mr. Garrard, let me ask you this -- and you may or may not answer it -- to determine what questions I have to ask. Do you intend, Mr. Garrard, to pose a hypothetical to the doctor as to the exposure in any of those three cases so as to bolster his opinion that

those are not mesotheliomas?

MR. GARRARD: His diagnosis, as I understand it, is not formed on the basis of what the exposure was in relation to mesothelioma, so I do not intend to pose a hypothetical to him that says, Doctor, assuming X exposure, does that have a bearing on your opinion as to whether or not it's a mesothelioma.

MR. BRICKMAN: You will not ask that question?

MR. GARRARD: That's correct. Not in relation to whether or not it is a mesothelioma. His opinions in relation to that, as I understand them to be, come from his examination of the materials in the case, not as to what the exposure was as far as whether or not it's a mesothelioma.

MR. BRICKMAN: But just so I'm clear that you are not going to come to trial and say, now, Doctor, in support of that, if his exposure was only so-and-so, does that support your opinion or the diagnosis of some other doctor that says it's mesothelioma, you are not going to do that?

MR. GARRARD: I don't understand

what you are asking me, Michael. I have tried to be clear as to what I have said.

BY MR. BRICKMAN:

Q. Doctor, do you know what the exposures are in these three individuals?

A. As far as I gather from the notes, I know what the exposures are.

Q. What notes are you referring to?

A. The hospital notes and further information from Mr. Garrard.

Q. You have in front of you some papers; is that correct, Doctor?

A. Yes.

Q. Could I take a look at those, please?

A. This is going back to what we went through before.

(Whereupon, a recess transpired.)

BY MR. BRICKMAN:

Q. Doctor, you have given me some handwritten notes as well as what appears to be the initial draft of your typed report?

A. Yes.

Q. Is that correct? Could you tell me when the handwritten notes were done in these

cases?

A. The handwritten notes were done over the last few weeks.

Q. And is that the case for all of the handwritten notes?

A. Yes.

Q. None of them were done last night or today?

A. No. One or two minor additions, that's all.

Q. One or two additions were made last night or today when you met with Mr. Garrard?

A. Yes.

Q. Could you just look through there and tell me which ones were additions made while you spoke to Mr. Garrard?

A. On the Billy Harris, there was a discussion whether the thing was a biopsy or a bloody tap on the 9th of the 12th, '87.

Q. You are identifying the handwritten notes of Billy Harris. You were looking at the back page, top line date, and it is a date 9-12-87, and I can't read what's written thereafter, but that was information you added on last night?

A. Yes, just the fact that it was a bloody tap of a pleural effusion. I mentioned it was a blood clot containing occasional cells, groups of cells which were suspicious of malignancy.

Q. Anything else added to any of those reports, sir?

A. Just the fact that the --

Q. Before you tell me what it is, tell me which report you're referring to.

A. Horace McBryde.

Q. The handwritten report of Horace McBryde?

A. And it was on the --

Q. The bottom of the first page?

A. Yes. Confirmation that the left lung seemed to be clear on the 1st of the 6th, '88 and 1st of the 10th, '88.

Q. Anything else, Doctor?

A. No.

Q. There are some other pages that are on a pad that are not separated as some of the other reports are. Were those added?

A. No. As far as I know, those are old.

Q. Would you look at all of them just to be sure, sir?

A. Yes, there was.

Q. Wait a minute. Could I just see what you are looking at, Doctor? You apparently have some other handwritten notes.

A. This just says that -- McBryde, bronchoscopies on the 8th of the 22nd, '87 and 7th of the 20th, '87 showed no abnormality.

Q. And that was added last night?

A. That was added last night.

Q. Is that it?

A. That's it, yes.

Q. One page slipped out, just so you keep them all together, the typed page.

MR. GARRARD: Right there.

(Whereupon, an off-the-record conference transpired.)

BY MR. BRICKMAN:

Q. Doctor, I notice at the bottom of some of your typed reports, you have some penned in comments?

A. Yes --

Q. Let me just ask my question, please. Just so it flows correctly on the

transcript.

When were those handwritten comments made, because they are not on my typed reports?

A. No. This was put on as an aid to memory about a week ago, so I knew I could remember these two tests.

Q. Were those two tests run on the tissue that you had?

A. They were. Yes, they were.

Q. And which two tests were those?

A. The B human chorionic -- that's why I put them down; I always forget it -- gonadotropin, and the carcinoembryonic antigen. I always forget which the CEA is.

Q. I notice in your reports where you refer to the CEA, but I don't notice where you referred to the other.

A. That came in the notes in later work to be done.

MR. GARRARD: The first one, Michael, so you won't be confused is a test that was done in the normal course of treating the individual as opposed to a test that was run by laboratories over here.

BY MR. BRICKMAN:

Q. You did not run other than the CEA -- well, strike that. I'll ask as we get to it.

Doctor, do you believe that asbestos can cause lung cancer in humans?

A. If there is sufficient heavy exposure, yes. Sufficient exposure to cause asbestosis.

Q. And what do you refer to as a sufficient exposure, just the ability to cause asbestosis?

A. Yes.

Q. And why do you require asbestosis in order to attribute a lung cancer to asbestos exposure?

A. In all the investigations we have done.

Q. And who is we, while you're explaining?

A. The team I worked with.

Q. Go ahead. Just tell me the team and then carry on with your answer?

A. Myself, Dr. Pooley and the people who referred specialists to us in the various

parts of Britain.

Q. Who?

A. Mainly came from the pneumoconiosis panels.

Q. Who?

A. We were working down in Davenport.

Q. I need names, Doctor.

A. Dr. J. P. Lownes [phonetic] was mainly responsible for seeing we got the tissue.

Q. Anybody else in that proverbial we that you're referring to?

A. No. The basis of the technical stuff and the basis of the question was receiving lungs from people who had mesotheliomas, and these came in from various parts of Britain, but mainly from the dockyards down in Davenport.

Q. Again, I don't want to interrupt you, but I think we are on two different wavelengths. I'm talking about lung cancers.

A. Lung cancers.

MR. GARRARD: Why don't you reask your question, so he will know what you're asking, Mr. Brickman.

BY MR. BRICKMAN:

Q. You are telling me, Doctor, that in

order for you to attribute a lung cancer to asbestos, you required asbestosis?

A. Yes.

Q. However, you didn't say you, you said we. You didn't say I require. You said we require asbestosis. What I first want to ask you, who is we? By name, who is we, and then tell me why you require asbestosis.

A. This is --

Q. First of all who is we?

A. This is mainly Dr. Pooley and myself and the technical staff who assisted on this matter.

Q. Who is the technical staff? Are they medical doctors?

A. No.

Q. Then we've got we. Now, why do you require asbestosis?

A. And the work that we did with Dr. Newhouse, Dr. Rossiter and Pooley and myself on cases from London. All these cases showed that when you have the carcinoma in these cases, these were asbestos cases, the carcinomas had a very high presence of fibers in the lungs. And this came out with heavy dosage.

Q. Okay. But why did you have to have asbestosis as opposed to just a lot of fibers?

A. Well, this is fitted in from the cases that Sir Richard Doll reported onwards, that the people having the heavy exposures developed the tumors.

Q. But not everybody who has a heavy exposure gets asbestosis, correct, or do they?

A. No, not everyone.

Q. But isn't it possible for them to have a heavy exposure, not get asbestosis, but get an asbestos lung cancer?

A. No.

Q. Why not?

A. Because -- this has just come out of all the epidemiological studies and the reports and the practical stuff we did. People radiologically, clinical asbestosis, who were heavy smokers who developed carcinomas.

Q. Yes, sir, but they also found in these studies that they had people who didn't have asbestosis who did have lung cancer, didn't they?

MR. GARRARD: Excuse me. Object to that because he hasn't said that.

MR. BRICKMAN: Well, I'm asking him

that.

MR. GARRARD: No, you're not. You're telling him that.

BY MR. BRICKMAN:

Q. Doctor, did they find cases of lung cancer without asbestosis in the ones you have just referred to?

A. The ones I just referred to, the cases that they found with lung cancer without asbestos were people who had very minimal exposure, and one assumed the lung cancer was associated with the cigarette smoking rather than the asbestos.

Q. It was assumed, but you had people who had lung cancer who had asbestos exposure who did not have asbestosis, correct?

A. Well, I think if you put the fact that we all have a certain amount of asbestos exposure. These are people with the absolute minimum amount of fiber in their lungs.

Q. Are there not also people who have intense exposure to asbestos who do not have asbestosis but who also developed lung cancer?

A. I think as far as I know, the figures in this country of people who smoke who

have asbestosis and are diagnosed by the pneumoconiosis panels is about 70 percent develop lung cancer or mesothelioma.

Q. So that if you have asbestosis, 70 percent of those have developed lung [illegible] or mesothelioma?

A. Yes.

Q. Okay.

A. See, and cigarette smoking is the major factor.

Q. But the 70 percent that you referred to, you attributed part of the cancer to asbestos exposure?

A. Part of the cancer to ashestos exposure.

Q. Now, let's go off a bit. Let's get away from that for a second. Mesothelioma. To attribute a mesothelioma to asbestos exposure, you don't require asbestosis, do you?

A. No. You require evidence of ashestos exposure and a certain number of amphibole fibers in the lungs.

Q. That's your criteria?

A. Yeah.

Q. But you do not require the dosage

sufficient to have caused asbestosis?

A. No.

Q. Now, mesothelioma is a type of cancer, isn't it?

A. A type of cancer, yeah.

Q. Yes?

A. Yes.

Q. Explain to me, Doctor, why you require asbestosis for a lung cancer to be attributed to asbestos exposure, but you don't require it for mesothelioma?

A. I think this is one of the problems which hasn't been solved. Mesotheliomas do occur with less asbestos in the lungs than you need for lung cancer.

Q. But we also develop lung cancer with lower levels of exposure, but you just don't attribute them to asbestos. How do you know it's not that lower level of exposure?

A. All the surveys, as far as I know, that have been done have all taken these to be a higher level of exposure.

Q. Now, Doctor, surely you have read of studies in the medical literature that said that asbestos can cause lung cancer without there

being concurrent asbestosis, haven't you?

A. I have seen some. I wondered about the basis of those. But certainly in our experience, this doesn't occur.

Q. You've seen only one?

A. No, I have seen several.

Q. Oh, several, okay. Which ones have you seen?

A. There have been several from Selikoff's laboratory.

Q. Would you agree with me that Dr. Selikoff is an authority in asbestos-related diseases?

A. Yes.

Q. And is there any reason to dispute his work in that area?

MR. GARRARD: Excuse me.

BY MR. BRICKMAN:

Q. And if so, tell me why.

(Whereupon, an off-the-record conference transpired.)

MR. GARRARD: Dr. Wagner has not said that Dr. Selikoff in his judgment takes the position that one need not have asbestosis.

MR. BRICKMAN: Well, I will clarify

that, then.

MR. GARRARD: In fact, Dr. Selikoff's latest data would seem to indicate things contrary to that, Mr. Brickman.

(Whereupon, an off-the-record conference transpired.)

BY MR. BRICKMAN:

Q. Doctor, let me just clarify something. When you referred to Selikoff's group, were you also referring to Dr. Selikoff?

A. I thought he had suggested this did happen. I know Nicholson has.

Q. Bill Nicholson is an authority in the field of epidemiology and asbestos-related diseases?

A. He has done considerable work.

Q. You don't consider him authoritative? I'm not saying you agree with everything he says. But do you consider him one of the authorities in the area, even though you may not agree with everything he says?

A. I consider him one of the persons who has done a considerable amount of work in the area.

Q. I guess that's close enough. I

guess that's probably as close as I'm going to get.

Let me ask you to assume, Doctor, you have an individual who has an occupational exposure to asbestos over a long period of time, and he develops lung cancer, and he is a cigarette smoker, but he does not develop asbestosis. Would you be of the opinion that asbestos played no role in causing that cancer?

MR. GARRARD: If he didn't have asbestosis?

BY MR. BRICKMAN:

Q. He did not have asbestosis?

A. I would attribute the disease to cigarette smoking.

Q. 100 percent to cigarette smoking?

A. Well, the --

Q. Did asbestos play any part in it, even a small role?

A. We know that cigarette smoking played a very much greater part.

Q. But did asbestos play some role or even a small role in that cancer in that particular case?

MR. GARRARD: I object to your

question, your hypothetical at this point, because you are now asking him to speculate, and he has told you that he would attribute cancer to cigarette smoking. And to take it any further without further facts is to ask him to speculate.

BY MR. BRICKMAN:

Q. Go ahead, Doctor. Would you attribute some small part of that cancer to that man's asbestos exposure?

A. I think this is speculation. But basically -- if he had the lung sufficiently -- heavy exposure, one would be in a difficult position to say this played no part.

Q. Okay. All right. How would you know, though, that cigarette smoking played the greater part?

A. This has come out clearly in the investigations both of Selikoff and Doll and Jeffery Berry; the major carcinogen of the two is the cigarette smoking.

Q. But how do you know in that particular case cigarette smoking itself played any role?

A. If he has been a heavy smoker for the periods you mentioned and he developed a

carcinoma, one would assume that cigarette smoking is the --

Q. Why?

A. This has come out on all the studies that they have done on the association between cigarette smoking and lung cancer.

Q. Well, there have been tests showing that cigarette smoking can cause cancer, correct?

A. Can cause lung cancer, yes.

Q. And there have been tests that have shown that asbestos can cause lung cancer, haven't there?

A. But to a much lower degree.

Q. But you would agree with me that asbestos can cause lung cancer, can't it?

A. If it causes asbestosis, yes.

Q. It can cause lung cancer, though?

A. Yes.

Q. All right. That cigarette smoking example, is there something specific about the tumor that shows it's a cigarette smoking cancer as opposed to an asbestos cancer?

MR. GARRARD: Wait a minute, Doctor.

MR. BRICKMAN: That's a pretty

simple question, now, Henry.

MR. GARRARD: But I don't remember now what your hypothetical was, about which I presume you are now still trying to ask questions.

MR. BRICKMAN: I have given him all the facts.

MR. GARRARD: I don't know that you have given him all the facts, and I object to, quote, that cigarette smoking example or whatever it was you just said, because I don't remember what your hypothetical was.

MR. BRICKMAN: Based on the fact you don't remember, you have an objection, and you can think of it later. You can find it out later and go back in the record and object as well.

MR. GARRARD: No, I don't want to do that. I guess I'm asking you, would you restate your hypothetical, because if I have forgotten it, the doctor may have forgotten what it was, and I don't want something stated here that is not appropriate.

MR. BRICKMAN: Be happy to.

BY MR. BRICKMAN:

Q. Doctor, in the case that I gave you

where a person had a long exposure to asbestos of an occupational nature, and he was a cigarette smoker, and he developed lung cancer, but not asbestosis, why do you attribute it to the cigarette smoking and not to the asbestos? Was there something specific about a tumor that you can attribute it to cigarette smoking as opposed to some other cause?

A. The point -- I think -- the chap, if he has got no primary fibrosis due to exposure to asbestos, it is very unlikely to be a factor in causing the disease.

Q. Well, why -- sorry.

A. The original -- there are so few noncigarette smoking asbestos workers who develop the tumor, that the original tumor, as far as I know, was peripheral adenocarcinoma, and now all types of carcinoma occur with the exposure to asbestos -- sorry, with exposure to asbestos and cigarette smoking.

Q. But is there something, though, specific about a tumor that you can look at and say that's a cigarette tumor as opposed to an asbestos tumor?

A. No.

Q. Do you require some evidence of other damage to the lungs from cigarette smoking such as emphysema so that you know that's a cigarette tumor?

A. No, not necessarily.

Q. Why not if you require other exposure -- other disease from asbestos? Why don't you require other disease from cigarette smoking? Do you understand my question?

A. I understand your question, yes. This comes out. This is the epidemiological association between cigarette smoking and development of lung cancer.

Q. But doesn't the epidemiology also say that asbestos can cause lung cancer?

A. If there is evidence of asbestos damage to the lung.

Q. But there is sort of a circular logic, isn't there, Doctor? As long as you require asbestosis to attribute a lung cancer to asbestos exposure, you automatically exclude all those lung cancers where there was asbestos exposure but no asbestosis.

MR. GARRARD: Wait a minute. Is that a question? That's a statement.

MR. BRICKMAN: I'm asking him, isn't that the logic he is working under?

MR. GARRARD: Excuse me. Object to that because he has told you that epidemiologic evidence is different for the two diseases and the two substances.

BY MR. BRICKMAN:

Q. Do you understand my confusion, Doctor?

MR. GARRARD: I don't.

THE WITNESS: I don't.

BY MR. BRICKMAN:

Q. Surely, Doctor, you have come across cases --

MR. GARRARD: Wait a minute. Did you finish your answer?

THE WITNESS: I was saying that in my belief, one needs evidence of asbestosis before one can associate the asbestos exposure with development of the lung cancer.

Q. But you don't need it --

A. Whereas the cigarette smoking, heavy cigarette smoking, you may find signs of excessive mucous production and emphysema, but these aren't essential.

Q. That's my confusion. Why aren't they essential if you require some other damage to the lungs from asbestosis?

A. This is the nature of the disease. I can't answer it.

Q. In any of your studies that you have done, have you ever come across asbestos workers who got lung cancer who did not have asbestosis?

A. In my opinion, no.

Q. You have never seen a case of a lung cancer in an asbestos worker who did not have asbestosis; is that correct?

A. Yes, I have seen it, but I have not attributed it to the --

Q. Why didn't you attribute it?

MR. GARRARD: Wait a minute. Did you finish your answer? Did you finish your answer?

THE WITNESS: Yes.

BY MR. BRICKMAN:

Q. Why didn't you attribute it to the asbestos exposure?

A. Because I firmly believe that you need evidence of primary fibrosis due to asbestos

before you do it.

Q. Is there a scientific reason for that that you've got to have some scarring in the lung? Is it the scarring that causes the asbestos lung cancer?

I really have never understood why you have to have asbestosis first. I'm not trying to trick you, Doctor. I know there are cases of lung cancer in asbestos workers. Why couldn't that asbestos have caused that lung cancer without causing asbestosis?

A. I would just say that my belief is that you would need lung damage, primary fibrosis.

Q. Why? Is there some mechanical process?

A. Possibly a means of attaining the asbestos in the lungs in cases where there is fibrosis.

Q. You mean you're just giving possibilities? You don't have any theory as to why you require the asbestosis?

A. I think the material has got to remain in the lung tissue for a long time to cause the disease. It's retention.

Q. But you can have asbestos fibers in

your lung all your life and not get asbestosis, correct?

A. Yes, I agree with that.

Q. Why isn't that retention sufficient to cause lung cancer?

A. I think we're going into the field of speculation as to why it happens. I don't believe there is any proof for the reason why it happens.

Q. But it does happen. We know they get lung cancer. We know they have asbestos in their lungs. They just don't have asbestosis. What I want to know is what scientific basis is there to say that you have to have the fibrosis as opposed to just the fibers?

MR. GARRARD: I object to the repetitive nature of your questions. He has already told you that he is basing it in part on his own work and in part on the epidemiology.

MR. BRICKMAN: I want to know specifically what he is basing it on, Henry. Maybe I'm wrong. I don't think the doctor knows for sure. I want to know the answer.

MR. GARRARD: This is not so mysterious to you. You have heard many other

doctors express the same opinion, so don't act so shocked.

MR. BRICKMAN: I have never understood it for those doctors who hold that opinion why they hold that opinion.

BY MR. BRICKMAN:

Q. Go ahead, Doctor.

A. The reason is on the cases we have done, that you find a large number of fibers, whereas mesothelioma occurs among people with slight, low retention of fibers. The lung cancers and the asbestosis occur both among people with the large number of fibers in their lungs. And the large number of fibers that are associated in these cases with the fibrosis.

Q. But haven't you seen cases of retention of large amounts of fibers without asbestosis?

A. Rarely in our work.

Q. I'm sorry?

MR. GARRARD: In our work rarely.

BY MR. BRICKMAN:

Q. But you can have? You can have -- strike that. At what point do you have a high retention of fibers? What number are you

referring to, Doctor?

A. I'm referring to something like 100 million.

Q. Have you seen cases where you have had 100 million --

A. 100 million fibers per gram dry weight of lung.

Q. Have you ever seen cases where you found that number, and they didn't have asbestosis?

A. Amphibole fibers and, to the best of my recollection, they have all had fibrosis, but I may be wrong on this.

Q. Let me just ask you to assume, since we don't know for sure, that some of them didn't have fibrosis, okay? They obviously had a lot of exposure, but if we assume there was some cases where there was no fibrosis, would you then be in a position to say that in those cases that that retention was sufficient to cause lung cancer even without the fibrosis?

A. I think one would have to consider it, but I am not sure.

Q. It might be able to cause it without the fibrosis under those circumstances; is

that correct?

A. Well, I think one would have to consider it, yes.

Q. You wouldn't rule it out under those circumstances?

A. No, I would want more proof.

Q. You would want more proof of what?

A. Of the people with this very high count not having any fibrosis at all.

Q. Okay, that's fair enough. As long as we have that, you would consider it then?

A. Yes.

Q. You would not rule out asbestos as a cause under those circumstances?

A. The chap is not a cigarette smoker?

Q. He may or may not be. What I'm asking you is, if you have that retention that you require, whatever that number was, would you attribute the asbestos exposure -- or the lung cancer, I'm sorry -- would you attribute the lung cancer in part to the asbestos exposure, given that high retention?

MR. GARRARD: In the absence of smoking?

MR. BRICKMAN: I didn't say in the

absence of smoking. I'm saying it doesn't make a difference whether he smoked or not. I'm asking.

THE WITNESS: If he was smoking, put it much more towards the smoking.

BY MR. BRICKMAN:

Q. But would you put part of it to the asbestos?

A. Would consider it, yes.

Q. And when you say you would consider it, what would give you the impetus to say, yes, asbestos played a part? What more would you need?

MR. GARRARD: If you know, Doctor.

BY MR. BRICKMAN:

Q. If you know.

A. I have always considered that there must be some fibrosis in the lung before one accepts this.

Q. But the reason you say you have got to have fibrosis is because you want to be able to say there has been sufficient retention of specific fibers?

A. Holding the fibers in a specific place, specific parts of the lung.

Q. Well, now, you're not saying the

cancer arises from the site of the fibrosis, are you?

A. No.

Q. You're just saying it has to be sufficient fiber retention in the lungs; is that correct?

A. Yes.

Q. If you have sufficient fiber retention in the lungs without asbestosis, you still meet your criteria, don't you?

A. If you have --

Q. Sufficient fibers in the lungs for sufficient periods of time, you still meet the criteria for attributing a lung cancer at least in part to asbestos exposure; is that correct?

A. Is it a true or hypothetical situation?

Q. It's a hypothetical. We don't have a specific situation. As a hypothetical, you would then have it, wouldn't you?

A. Well, as a hypothetical situation, one would have to consider it, yes.

Q. And not only -- you keep using the phrase consider it, Doctor. You might also consider these space invaders zapping somebody?

A. No.

Q. Would you then be of the opinion that more likely than not that asbestos played some role in that cancer?

MR. GARRARD: Doctor, Mr. Brickman is asking you again a hypothetical on fairly scanty information, and I ask you not to speculate. If you give him an opinion based upon your knowledge of science and literature and your experience at this point, that's fine; but I ask you not to speculate.

BY MR. BRICKMAN:

Q. Go ahead, Doctor. Would you then be of the opinion that asbestos played some role since we had sufficient retention for sufficient period of time?

MR. GARRARD: In a nonsmoker?

MR. BRICKMAN: Smoker or nonsmoker. It doesn't make a difference.

THE WITNESS: I'm not sure of that amount of fiber in your lung without causing a reaction.

BY MR. BRICKMAN:

Q. Your theory, as I understand it, would be satisfied so that you would attribute at

least part of the lung cancer to asbestos; is that correct?

MR. GARRARD: No.

THE WITNESS: I'm saying I would be surprised to see a chap with so much asbestos in his lung and no reaction.

BY MR. BRICKMAN:

Q. Okay. But if you did, if you did -- it's a hypothetical, Doctor. Give me the hypothetical. If you did find that person, would you then attribute the lung cancer in part to the asbestos?

A. I need more evidence than one case. This is a sort of change in the crux to the whole problem.

Q. How many cases would you need?

A. This is getting --

MR. GARRARD: This is getting into real speculation, and I would ask you not to speculate. And I would object to any further questions at this point.

BY MR. BRICKMAN:

Q. Doctor, how many cases have you seen of lung cancer in individuals who had asbestos exposure but not asbestosis?

MR. GARRARD: Who were not smokers?

MR. BRICKMAN: Doesn't make a difference.

MR. GARRARD: Sure it does.

BY MR. BRICKMAN:

Q. I am asking how many individuals he has seen who were asbestos workers who did not have asbestosis who had lung cancer. How many have you seen?

A. The cases that I can remember that I have seen with lung cancer and heavy asbestos exposure have all had fibrosis.

MR. BRICKMAN: Let me take a couple minute break if you don't mind to go to the bathroom. Is that okay, Doctor?

THE WITNESS: Okay.

(Whereupon, a recess transpired.)

BY MR. BRICKMAN:

Q. Doctor, do you smoke?

A. No.

Q. Did you used to smoke?

A. Yes.

Q. Okay. You just recently quit?

A. No. 1969.

Q. 1969 you quit, okay. And how long did you smoke for?

A. I suppose about 20 years. I think from '51 to '69.

Q. But from 1969 on, you have not smoked any cigarettes?

A. No.

(Whereupon, an off-the-record conference transpired.)

BY MR. BRICKMAN:

Q. Doctor, other than the research you mentioned earlier, are you doing any other research?

A. We're involved in --

Q. And who is we? When you say we, I've got to ask you.

A. The group, Dr. Pooley, Dr. Gibbs has taken over most of my stuff, and myself. We are trying to find out the incidence of tumors related to Amosites in this country and South Africa.

Q. Okay. And have y'all found cases of tumors caused by Amosite?

A. At the present moment, with very heavy dosage -- we haven't sort of completed the

work, and we haven't gotten material precisely we wish to have. Very initial stuff, mainly, and trying to get the material.

Q. Do you have the opinion that Amosite can't cause tumors?

A. I think very high dosage, if you get enough of the fine fibers, it probably can. Not much less than the -- the blue fiber.

Q. Can Chrysotile cause tumors, in your opinion?

A. Excessive exposures to Chrysotile will cause asbestosis.

Q. And if you have asbestosis, can you then have the tumors?

A. Then you can have the tumors.

Q. So Chrysotile can cause the tumors if you have the asbestosis?

A. Yes. These mesotheliomas, we still feel that Chrysotile itself does not cause mesothelioma.

Q. But Chrysotile can cause lung cancer, cancers, and so can the Amosite, and so can the Crocidolite?

A. Can cause, yes, lung tumors. And Tremolite, yes.

Q. And Amosite can cause mesothelioma?

A. This is a matter that is still under investigation. Probably with very heavy dosage.

Q. Probably can cause mesothelioma; is that correct?

A. Yes.

Q. Other than you and Dr. Gibbs, do you know anybody who is of the opinion that Amosite cannot cause mesothelioma?

A. Certainly in South Africa, I think they are going at the most, four or five mesotheliomas associated with Amosite compared to thousands associated with the Crocidolite.

Q. No, you missed my question. Other than you and Dr. Gibbs, do you know anybody who is of the opinion that Amosite cannot cause mesothelioma? Strike that. Do you know anybody who says Amosite cannot cause mesothelioma other than perhaps Mr. Garrard's client?

A. If it does --

Q. No, no.

MR. GARRARD: Wait a minute.

BY MR. BRICKMAN:

Q. Do you know of anybody?

MR. GARRARD: Hold it.

THE WITNESS: It was my view for a long time, and the cases are still coming through.

BY MR. BRICKMAN:

Q. Doctor, can you name for me any person who believes Amosite cannot cause mesothelioma?

MR. GARRARD: Do you understand his question?

THE WITNESS: Yes. I think it depends -- it appears to have caused a few.

BY MR. BRICKMAN:

Q. You're not understanding my question, Doctor. Name me names; name people -- give me the names of anybody who in your opinion believes Amosite cannot cause mesothelioma? Who believes that?

A. I think at the present moment this is why it's being investigated.

MR. GARRARD: I don't know what your confusion is, Mr. Brickman. He hasn't told you that, number one, on present evidence he knows it doesn't; and number two, he hasn't told you that he is knowledgeable of people taking that position.

MR. BRICKMAN: Well then all he has got to say is he doesn't know of anybody.

BY MR. BRICKMAN:

Q. Do you know anybody --

MR. GARRARD: Don't shout, please.

BY MR. BRICKMAN:

Q. -- who believes Amosite can't cause mesothelioma? Do you know anybody like that? Yes or no.

A. At the present moment, no.

Q. Do you know anybody who says Amosite can't cause lung cancer?

A. No. If it causes fibrosis, it will cause lung cancer.

Q. Do you talk to Dr. Gibbs on a regular basis?

A. Yes, I do.

Q. And did you talk to Dr. Gibbs about these three cases that you reviewed for Mr. Garrard?

A. After we reviewed them, yes, we did have a discussion, because he is taking over most of my staff and all the histochemistry that is done there.

Q. Okay. So the person that did your

histochemistry is the same person that did Dr. Gibbs' histochemistry?

A. Yes.

Q. You yourself did not do the histochemistry?

A. I do not have the facilities.

Q. Did you oversee whatever, the staining and whatever else is done, for the histochemistry and the immunohistochemistry? Did you oversee it in some fashion?

A. No. I saw the results.

Q. And the results you saw were the slides themselves, or did you see the report of the technician?

A. No, the slides themselves.

Q. You saw the slides, and you said, either it's stained positive or negative?

A. Yes.

Q. Okay. At the time you saw the slides and made your report of whatever the staining showed, had you discussed with Dr. Gibbs what he had found?

A. No. We looked independently and then we came around to discuss the histochemistry.

Q. Did he do separate stainings from

yours?

A. No.

MR. GARRARD: The stains were done at the same laboratory, Mr. Brickman.

BY MR. BRICKMAN:

Q. Okay, that's what I'm asking.

A. They were the same.

Q. So the same stain you saw, he saw?

A. Yes.

Q. And did he provide you with any information -- this is Dr. Gibbs -- that you did not have yourself?

A. Well, he had the --

Q. Other than the stainings that were done?

A. No.

Q. What did y'all discuss?

A. We discussed the positivity or negative nature of the staining.

Q. Did you take any notes?

A. The notes are here.

Q. Did you take any other notes from that meeting?

A. I wrote them on a paper. It's not here.

Q. Where do you have them? Where, sir?

A. I can't remember. I just wrote down positive or negative as the stuff may be.

Q. When you wrote down positive or negative --

A. What one found from looking at the sections.

Q. Did you look at them at the same time that Dr. Gibbs looked at them?

A. No, we looked at them separately, and then we looked at them together.

Q. Were you up in -- where is his lab?

A. In Pernarth.

Q. How do you spell that?

A. P E R N A R T H.

Q. Okay, Pernarth. When you looked at them in Pernarth, did you look at them on the same day that Dr. Gibbs looked at them?

A. No, he had looked at them earlier.

Q. He looked at them before you?

A. Yes. We did have a combined look after.

Q. Did the combined look change your opinion in any way as to whether the staining was

more positive or less positive?

A. No.

Q. Do you have any handwritten notes as to what you found on examining the stains?

A. Not retained, no.

Q. You threw them out?

A. Uh-huh.

Q. Is the answer yes?

A. The answer is, as far as I know, yes.

Q. You just mentioned a few minutes earlier that you had some handwritten notes that you thought you had that you may have kept?

MR. GARRARD: He said he made some. He never said he kept them.

BY MR. BRICKMAN:

Q. You made some other notes? Did you throw away all of your other notes?

A. I think I have still got some.

Q. Which ones do you have?

A. Just the write-up on the positivity of the tests.

Q. Okay. Do you have a problem with providing those to Mr. Garrard and giving them to me?

MR. BRICKMAN: And, Mr. Garrard, do you have a problem with that, or do I need to subpoena those as well?

MR. GARRARD: I haven't seen the notes, Mr. Brickman, so I don't know.

BY MR. BRICKMAN:

Q. Doctor, let me ask you not to throw those out, okay? And these are your handwritten notes on the staining; is that correct?

A. Yes. I don't know if I have got them. I've got some handwritten notes roughly on it.

(This page contains information to be supplied by counsel and/or the deponent.)

Q. Do you have any material here at the hotel other than what's in front of you, Doctor?

A. A few notes, yes.

Q. Let's take a break and let me ask you to go get those, Doctor.

MR. GARRARD: No.

MR. BRICKMAN: No, Mr. Garrard, don't play games with me. If he has notes, I want to see them. It's upsetting with me.

MR. GARRARD: Don't get upset. I

don't know what he has got. I don't know if you're entitled to anything. He is not under subpoena, so the truth is you are not entitled to them.

MR. BRICKMAN: I'm going to ask him to produce them. If not, I am going to call Texas.

MR. GARRARD: I would like you to call Judge Parker. I think he would like getting up at 5:00 AM in the morning. I don't know what the notes are.

MR. BRICKMAN: They are here in the hotel.

MR. GARRARD: Don't shout. This is not a Charleston or Barnwell hotel.

MR. BRICKMAN: You're playing games with me.

MR. GARRARD: Nobody is playing games. I don't know what the notes are. Nobody is playing games. If anybody is playing games -- we have been here for two hours.

MR. BRICKMAN: This doctor is telling me he threw away notes, and he knows he has them in the hotel room.

MR. GARRARD: He hasn't said that.

Let's not get into that situation.

MR. BRICKMAN: Let's get down to the nitty-gritty. I would like to see the notes. Are you going to produce them and if so --

MR. GARRARD: Are we going to get through at lunchtime?

MR. BRICKMAN: We are obviously not going to get through at lunchtime.

MR. GARRARD: Why are we wasting time when we haven't talked about any of these cases?

MR. BRICKMAN: You may refer to it as wasting time. Perhaps you are wiser than me. This is the way I fumble through depositions. I do the best I can. I try to get to the points I am making, but at this point in the deposition, I would ask you to produce those notes, whatever notes he has. Whatever he has got on those cases, let me see it.

MR. GARRARD: I don't know what the notes are.

MR. BRICKMAN: Let's go look at them, Henry.

MR. GARRARD: Why don't we go on until lunchtime.

MR. BRICKMAN: Now is a good time. We are right on point. They're in the hotel. It can't be more than five minutes. You'll say yea or nay, Michael.

MR. GARRARD: But you are not entitled to them, Mr. Brickman.

MR. BRICKMAN: I'm asking you to produce them.

MR. GARRARD: When I look at them, I'll see.

MR. BRICKMAN: Because now is the time I am discussing it. Now is the time I'm talking about what his handwritten notes will show. Now is the appropriate time. Will you please do it now, Mr. Garrard?

MR. GARRARD: See, it sets a bad precedent, Mr. Brickman, when there is no subpoena if I voluntarily let you look at these notes without any quarrel.

MR. BRICKMAN: Mr. Garrard, are you going to produce them or not?

MR. GARRARD: I don't know.

MR. BRICKMAN: Would you go look and tell me what you are going to do?

MR. GARRARD: I don't have them.

MR. BRICKMAN: Well, go get them, please. Are you going to do it or not?

MR. GARRARD: I'm thinking about it.

(Whereupon, a recess transpired.)

BY MR. BRICKMAN:

Q. You have now handed me, Doctor, some additional notes that you had up in your room; is that correct?

A. Yes.

Q. And these are on Mr. McBryde, Mr. Warrick, and Mr. Harris; is that correct?

A. Correct.

Q. And they have at the top, medical-legal case, Texas series?

A. Those are Dr. Gibbs'.

Q. Are these all Dr. Gibbs' notes?

A. Yes.

Q. Do you have any notes of your own?

A. Well, the writing on there is mine.

MR. GARRARD: There is some writing on there which is his, Mr. Brickman.

BY MR. BRICKMAN:

Q. Let me ask this question --

A. I just took the thing down roughly and compared the results.

Q. Other than your handwritten notes that are on these documents, do you have any other papers with regard to these cases?

A. No.

MR. GARRARD: He has already shown you some.

BY MR. BRICKMAN:

Q. Other than the ones you have showed me this morning, do you have any other notes, typed, handwritten, anything on these cases?

A. No.

Q. Do you have anything at home?

A. No. All I have you have there. I've got the other cases at home, yes.

Q. The other cases at home. But everything on these three cases or general notes, you have produced to me and you have nothing else at home?

A. No.

MR. GARRARD: He has got the medical records we sent him.

THE WITNESS: I've got the --

BY MR. BRICKMAN:

Q. Did you bring the medical records with you to the hotel?

A. No.

Q. Why not?

A. Because I have been through them, and I thought that Mr. Garrard would have his share, and they are pretty bulky to carry around.

Q. Now, let me take a look at these for a second, Doctor. Bear with me.

Do you know whose forms these are that you have given me that have medical-legal case, Texas series?

A. Those are Dr. Gibbs'. He gave them to me afterwards, because I saw a limited amount of material, just to show me what the other material was.

Q. Are the notes that are in pen that are not copied, those are your notes?

A. Those are my notes, yes.

Q. And when were those notes made?

A. These were made the first time I went through the histories.

Q. The first time you went through the histories?

A. Yes.

Q. Is that correct?

A. My notes.

Q. The notes that I am referring to that I am showing you that now you just gave me, they are typed on there, medical-legal case, Texas series and on the back of the last page I see some notes. Those are yours?

A. Yes.

Q. Those were made when, when you reviewed the histories?

A. First reviewed the histories, yes.

Q. And did you review the history up at Pernarth? Is that when you looked at the medical records?

A. The medical records I had down in Weymouth.

Q. In Weymouth?

A. Yes.

Q. And you looked at the medical histories before you looked at the stains?

A. No. Because the medical histories arrived after I had seen the stains.

Q. So you saw the stains and then you got the medical histories?

A. Yes.

Q. When did you get Dr. Gibbs' notes?

A. After we had been through the cases. The first time I went through the cases. I had seen everything, and then Mr. Garrard had to get the material back. So I made sufficient notes on the first time through on the histochemistry. I hadn't been through the detail of all the slides.

Q. I apologize, would you tell me that one more time? Go through the chronology of when you got materials and when you took notes.

A. I went up and saw the cases.

Q. When you say the cases, the slides?

A. The slides, yes.

Q. You saw the slides at Pernarth?

A. Pernarth.

Q. That's the first thing you ever saw?

A. First thing I ever saw.

Q. And you saw the slides before you talked to Dr. Gibbs?

A. Yes.

Q. Did you tell Dr. Gibbs which stains to use or anything like that?

A. No. The ones that had been done.

He had the -- the cases were there, because he had the only opportunity of seeing the cases.

Q. So before you talked to him at all about it, you saw the slides?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And after seeing the slides, you talked to him about the cases?

A. Yeah.

Q. And at that time, did he give you these items marked medical-legal, Texas series?

A. They were xeroxed. They came down later. These I got on my second visit. There were four visits up there.

Q. You went four times to Pernarth?

A. Yes.

Q. The first time you went to Pernarth, did you look at all three of these cases, Harris, Warrick and McBryde?

A. Seven cases -- nine cases.

Q. Did you look at all nine cases the first time you went up to Pernarth?

A. No. I looked at eight. One was added later.

Q. Is that the Gray case? Is that the Gray case that was added later?

A. No.

Q. So you looked at eight or nine cases. And as far as you know, of those eight, McBryde, Warrick and Harris were three of the eight or nine?

A. Yeah.

Q. What did you go up the second time for?

A. The second time, I went up to receive these notes and see what was left of the histology.

Q. Okay. What do you mean what was left of the histology?

A. Because what happened was I had a look through the cases as far as I could do in a limited time, because they had to go back. And then Dr. Gibbs had done some extra study on the cases he had left, and I came up and saw those.

Q. So you saw the initial stains. They had to be shipped back to Mr. Garrard?

A. Yeah.

Q. Then you came back a second time, and Mr. Garrard shipped them back to you again?

A. No. There had been a certain number of blocks. I never saw the total. There were a certain number of blocks, and on those, Dr. Gibbs had taken slides.

Q. And the second time up you saw the slides you hadn't seen the first time around; is that correct?

A. I saw them in more detail, yes.

Q. What do you mean more detail?

A. The first time I looked at them, we hadn't a written report. The second time I prepared the report.

Q. All right. The first time you just looked at them and didn't make any report?

A. No.

Q. Just your notes?

A. Notes, yes.

Q. The second time you went up there, you dictated a report or you typed up a report?

A. The reports that are here, yes.

Q. Before you did the second report, did you have Dr. Gibbs' reports?

MR. GARRARD: You mean his notes?

BY MR. BRICKMAN:

Q. His notes?

A. Yes.

Q. Did you also have his typed report?

A. I haven't seen his typed report.

Q. You haven't seen his typed report. And before you did your typed report, had you already discussed the case to some extent with Dr. Gibbs?

A. Yes.

Q. What did you go up there the third time for?

A. The third time -- the third time was to get the reports typed up because I had the secretary up there. I had another look at some of the cases. And the fourth time I went up there for a final look at all the cases.

Q. Each time you went up there, did you discuss them with Dr. Gibbs?

A. Yes.

Q. Okay.

A. At various stages.

Q. Did you and he disagree about anything in these cases that you recollect?

A. Not -- not on these -- we disagreed on one of these cases.

Q. Do you recall what that is?

A. That was on the final diagnosis on -- not Harris. On Alvin Warrick.

Q. And in that case?

A. He thought it was a teratoma, and I thought it was an earlier germ cell tumor. And then he showed me further histochemistry that showed he was probably right on the case.

Q. Now, Doctor, you mentioned earlier that you had yourself some handwritten notes on the stains themselves?

A. Yeah.

Q. Where are those?

A. Those I didn't keep.

Q. You have thrown them all out?

A. I have thrown them all out.

Q. None at home?

A. None at home.

Q. None here at the hotel?

A. None at the hotel.

Q. None that exists anywhere to your knowledge?

A. No. Very brief notes, plus, minus, plus, which appear in the document.

Q. And as of this point in time, there exist no other notes that were written by you or

typed by you on these three cases?

A. No. Because --

Q. And if they are in your trash can in your hotel, I --

A. They are not in the trash can in the hotel.

MR. GARRARD: Mr. Brickman, I don't appreciate that. We do not engage --

MR. BRICKMAN: If we had started out the beginning of the deposition without playing games --

MR. GARRARD: Nobody is playing games.

MR. BRICKMAN: Bull.

MR. GARRARD: Nor was there any subpoena in regard to this case, Mr. Brickman, that required us to produce anything.

MR. BRICKMAN: The doctor didn't remember where his notes are?

THE WITNESS: Once the thing was typed, I destroyed the handwritten notes. Possibly now that you mention it, I should have kept them.

BY MR. BRICKMAN:

Q. It's fine to do whatever you do

with them, Doctor. We just need to know, the confusion of where the notes were.

MR. GARRARD: There is no confusion.

THE WITNESS: Do you need those?

MR. BRICKMAN: I'm going to ask for a copy of those, Doctor. Is there a problem?

MR. GARRARD: There may be with me.

MR. BRICKMAN: I have got them in my hands; I'm not going to give them back. Can we have a copy for the record?

MR. GARRARD: I don't know. There may be a problem.

MR. BRICKMAN: If you have a problem, I will have the doctor read them into the record.

MR. GARRARD: I haven't said whether I have or I don't.

MR. BRICKMAN: I want to know if I can attach them to the deposition.

MR. GARRARD: I don't know.

MR. BRICKMAN: Let's mark them then as exhibits to the deposition.

THE WITNESS: Let's haul in Dr.

Gibbs.

MR. BRICKMAN: Let's mark this first one as Exhibit A. It is captioned medical-legal case, Texas series with the name Billy Harris on it.

MR. GARRARD: I don't know if I can agree to that. I don't want them marked.

MR. BRICKMAN: I am asking to have them marked.

MR. GARRARD: We are not going to mark them at this point. I don't know where that puts Mr. Roberts in that situation. I am saying I have not agreed to copy them. If I do, then you can mark them. Why don't you get on with the deposition?

MR. BRICKMAN: Because we have to identify them.

MR. GARRARD: Can you identify them by the name?

MR. BRICKMAN: The proper way is to mark them as exhibits. I'm asking that they be marked.

MR. GARRARD: I'm saying don't mark them.

MR. BRICKMAN: The first one as

number 1. The second one is also captioned medical-legal case, Texas series with the name Horace McBryde on it. That will be number 2.

MR. GARRARD: If you wouldn't act so self-righteous.

MR. BRICKMAN: I think I have every right to be.

MR. GARRARD: You don't even have any right to have them.

MR. BRICKMAN: If you want to play games. The doctor is telling me he has these notes. They are at home.

MR. GARRARD: You're trying to imply things that don't even exist.

MR. BRICKMAN: You're playing games, and the doctor is playing games.

MR. GARRARD: The doctor is not playing games.

MR. BRICKMAN: Yes, he is. Number 3 is entitled medical-legal case, Texas series, Alvin Warrick.

(Whereupon, the reports were marked as Plaintiffs' Exhibits 1, 2, and 3 for identification.)

BY MR. BRICKMAN:

Q. Doctor, what are you charging Mr. Garrard an hour nowadays?

A. $300.

Q. And what do you charge him when you, for instance, fly to Texas for your air time?

A. I have only flown to Texas once, and I didn't charge anything.

Q. And you didn't charge anything for your flight?

A. Mr. Garrard paid for the flight, yes.

Q. You didn't charge him anything for the time you spent flying?

A. No.

Q. And how many times have you flown to the United States to meet Mr. Garrard?

THE WITNESS: About five? Ask Mr. Garrard.

BY MR. BRICKMAN:

Q. Your best recollection. Mr. Garrard is going to play coy with me and not answer.

MR. GARRARD: Mr. Garrard doesn't have to answer, Mr. Brickman. Somehow we have forgotten what the federal rules are all about.

MR. BRICKMAN: The doctor was looking to you for the answer.

THE WITNESS: Can I come off the record for a moment?

BY MR. BRICKMAN:

Q. Yes, sir, of course, you can.

MR. BRICKMAN: Off the record.

(Whereupon, an off-the-record conference transpired.)

BY MR. BRICKMAN:

Q. Back on. Have you read the transcripts of any of your prior depositions, Doctor?

A. Yes.

Q. Did you read any of them in preparation for today's deposition?

A. Regretably, no.

Q. You have been to the United States approximately five times to see Mr. Garrard. Have any of those visits been in the last year?

A. No.

Q. And I believe you have told me previously that in those five visits, you have also met with Mr. Jim Crosby and Mr. Bruce Shaw who represent other defendants in the litigation

in the United States?

A. That's correct.

Q. Have you met with them on any occasions when Mr. Garrard was not present in the United States?

A. In October, I went over to a meeting. There was a meeting on cancer research in New York by the General Motors Cancer Research Association. And Mr. Bruce Shaw came up, and I had a chat there.

Q. Did you talk about matters dealing with asbestos at that time with Mr. Shaw?

A. We talked, yes, about the identification of mesotheliomas in man and animals not associated with exposure to asbestos.

Q. And this was in October of '89?

A. As far as I remember, yes.

Q. In the last year, have you met with Mr. Garrard here in England other than last night and today?

A. I don't think so.

Q. He won't help you.

MR. GARRARD: I think I may have seen you once in the past year in England.

BY MR. BRICKMAN:

Q. One time perhaps?

THE COURT REPORTER: Your response?

THE WITNESS: I'm just trying to think. I can't remember. Maybe. I don't remember the occasion.

BY MR. BRICKMAN:

Q. I saw you approximately one year ago almost to the day, within a couple of days.

A. I have seen Mr. Garrard since then.

Q. All right, you did see him. And at that time, what did y'all discuss?

MR. GARRARD: I'm going to object to that. I don't think you're entitled to know what I discussed.

MR. BRICKMAN: Wait a minute. What are you talking about? Why not? What are your grounds for objecting.

MR. GARRARD: Privilege.

MR. BRICKMAN: What privilege?

MR. GARRARD: I don't know. I don't know that you are entitled to that.

MR. BRICKMAN: I sure am.

MR. GARRARD: No, you are not.

MR. BRICKMAN: You make an

objection.

MR. GARRARD: I object to that.

BY MR. BRICKMAN:

Q. What did you discuss, Doctor?

MR. BRICKMAN: I want to hear this privilege later when you think of it.

THE WITNESS: The general problems of mesotheliomas and asbestos and fibers.

BY MR. BRICKMAN:

Q. Okay. Did you discuss any specific cases, to your recollection?

A. Not to my recollection. We did discuss the case we were working on.

Q. That was the Greer case?

A. That was the Greer case.

Q. There were a lot of other things that came up at the time?

A. More general talk on the position of the different fibers and the interpretation of various experiments. And once again the question of showing whether they were mesotheliomas in man and animals that occurred spontaneously that were related to asbestos.

Q. When you meet with Mr. Garrard, I assume you charge him your normal hourly fee,

$300?

A. On the time we're working, yes.

Q. And do you know approximately how much money you derived in 1989 from Mr. Garrard, Mr. Shaw, Mr. Crosby?

A. No. The accounting year goes from April to April. I have handed everything over to my accountant.

Q. So you just handed the material over to your accountant last month?

A. Yes.

Q. And you don't recollect how much it was?

A. No.

Q. Do you know how much time you spent on these Texas cases?

A. It's been about 12 hours.

Q. That's all on all three cases? That includes your first visits to Pernarth?

A. No, it doesn't. Going on to about 20 hours.

Q. How many?

A. 20.

Q. And that includes your four visits to Pernarth, your meeting with Mr. Garrard last

night, 20 hours?

A. No. Comes to about -- I hadn't thought about that.

Q. Ball park. Just a ball park estimate. About 20 to 24 hours?

A. 20 to 24 hours. No, it's more than that. I haven't assessed it up.

Q. More than 24, though, now?

A. Yes.

Q. Where do you keep those records of how much time you spend?

A. In my diary.

Q. When you say your diary, do you keep a diary where you write notes of what happened during the day, or do you mean in the diary, your calendar?

A. Calendar.

Q. You don't keep a diary saying I met Joe Blow today?

A. No.

Q. But in your calendar, you keep how much time you spend on a case?

A. Usually, yes.

Q. Do you have your calendar with you today?

A. No.

Q. And you don't have it in the hotel, either?

A. No.

Q. Okay. Do you still give reports to Mr. Garrard, Mr. Shaw, and Mr. Crosby on a monthly basis on the medical literature that you review?

A. If anything new or interesting comes out.

Q. And you talk to them approximately once a month still?

A. One of them once a month.

Q. And when you talk to one of them once a month, who do you send your bill to for that work?

A. Usually the chap I talk to.

Q. How do you know who to call for your monthly report or whatever it is?

A. This is the person whose work I think I have been doing.

Q. We're talking about two different things. At the last deposition, Doctor, you advised me that part of your work for Mr. Garrard, Mr. Shaw and Mr. Crosby was to keep up with the literature and advise them of current

developments?

A. Yes.

Q. Is that still the case?

A. Yes.

Q. And that you would give them telephone reports approximately once a month?

A. On various parts.

Q. Yes, sir. And do you still do that, sir?

A. Unfortunately, this year would be more occasional than last year.

Q. How do you decide who to call, whether to call Mr. Shaw, Mr. Garrard or Mr. Crosby?

A. Mr. Crosby was especially interested in the stuff we were doing in South Africa, as was Mr. Shaw.

Q. How would you decide whether to call Crosby or Shaw, or would you call them both?

A. No. One or the other.

Q. But you would alternate?

A. Well, it would just depend where we were on the -- it's not really done on a regular basis, as I explained last time.

Q. When is the last time you talked to

Mr. Shaw and Mr. Crosby, then, by telephone?

A. I spoke to Mr. Shaw about two months ago.

Q. And that's the most recent you have talked to Bruce, Mr. Shaw, or Mr. Crosby?

A. Yeah.

Q. Approximately how much of your time is spent reviewing materials or keeping abreast of the literature for these companies such that Mr. Garrard, Mr. Shaw and Mr. Crosby represent.

A. Well, a total comes to about between 20 and 30 hours a week, really -- sorry, a month.

Q. I'm sorry, what's that, a month?

A. A month.

Q. And this includes looking at cases like these?

A. Yes.

Q. And the literature searches, you spend about 20 or 30 hours a month for them?

A. Yeah.

Q. And about how much of your time is spent doing your research at Pernarth? How often do you go up there?

A. Officially, once a month.

Q. And is that for a day?

A. Usually a day or usually overnight.

Q. And the rest of your time in a month, do you do any other particular work for anybody else?

A. There is a thing called the Harvard -- I'm trying to get the initials. There is a group reporting to Congress, HEI. Something the environmental institute.

Q. EPA?

A. No, something environmental institute.

Q. NEIH?

A. Huh-uh. I'm trying to think.

Q. Go through all the letters of the alphabet.

A. It's -- HEI.

Q. Is that a private institute?

A. It's an institute that's part of the Harvard campus.

Q. You think it's part of Harvard University?

A. The people there are associated with it.

Q. Okay.

A. I'm afraid I can't think. It's the Health Environmental Institute.

Q. Health Environmental Institute and it's associated somehow with Harvard University?

A. Yes. They're going through the thing with EPA and advising on a literature search which I wasn't involved in.

Q. And who else are you dealing with at HEI, or who are you dealing with there, sir?

A. I don't remember the chap's name. Dr. Powers. A chap called Archibald Cox is the chairman.

Q. Archibald Cox? He is a lawyer?

A. He is, yes.

Q. Are there any other doctors on this committee?

A. A chap called Powers. A chap called -- can't remember the names. I've been associated with Powers and Archibald. And there was one -- a chap called Preston is actually the chairman of the committee.

Q. Okay.

A. Environmental chap.

Q. Is it dealing with asbestos?

A. As far as I know, it's a literature

research on asbestos in buildings.

Q. Have y'all issued any report?

A. No.

Q. Have you issued any written report to them?

A. No, I have just become involved with it.

Q. All right. Are you doing any other work during the month other than with the HEI and the 20 to 30 hours a week --

MR. GARRARD: Excuse me. He said a month.

MR. BRICKMAN: A month. What did I say?

MR. GARRARD: Week.

BY MR. BRICKMAN:

Q. -- 20 or 30 hours a month with Mr. Garrard's group and the once a month visits to Pernarth?

A. Pernarth. We are doing research into the fact when asbestos was first used in the States. That's part of the thing we're doing for Mr. Shaw and Mr. Garrard.

Q. What is that now you are doing for them?

A. Getting the history of the first use of blue asbestos in the States.

Q. Who is doing that, you yourself or somebody else doing it with you?

A. A chap called Ilgrin.

Q. Ilgrin?

A. Ilgrin.

Q. How do you spell that, just the best you can?

A. E [sic] L G R I N.

Q. Mr. Garrard, Mr. Shaw and Mr. Crosby have asked the two of y'all to find out when Crocidolite was first being used in the United States?

A. We are interested in finding it out.

Q. Are they paying you the $300 an hour for your work trying to find that out, too?

A. No.

Q. What are they paying you for that?

A. We are putting it forward. Nothing has appeared yet.

Q. Let me make sure we have a language understanding. You are going to give them a report on that issue?

A. If they want it, yes.

Q. Have you asked them yet?

A. We have sent a copy of the preliminary work.

Q. Okay. Who did you send it to?

A. Mr. Garrard.

Q. And when did you send it to him?

A. A couple of months ago.

Q. And did you send him a bill with it?

A. No.

Q. Are you going to?

A. If he wants the work to continue.

Q. Did you send him any bill for the work you already did?

A. No.

Q. Okay. Do you have an opinion as to when Crocidolite was first used in the United States?

A. It seems to me 1907, which we are still working on.

Q. 1907 you think?

A. Yes.

Q. And you are waiting for Mr. Garrard to tell you whether he wants you to proceed

further?

A. To a certain extent, yes.

Q. Have you done any study to see when Amosite was first used in the United States?

A. Well, that comes into it partly. I would be much more interested obviously in Crocidolite.

Q. Do you know which type of asbestos Mr. Garrard's client used in this case, in these cases?

A. No.

Q. You don't?

A. No. In these cases, I have purely been asked to look at the tumors.

Q. Doing anything else, Doctor, with your time other than those items you have just mentioned to me, any other work?

A. No.

Q. Okay. Not doing any other work for any other companies or any other lawyers?

A. No, no other lawyers. I have been doing a certain amount of advising to the pathologists for TIMA.

Q. What is TIMA?

A. I knew that you were going to ask

that.

Q. T I M A, Thermal Insulation Manufacturers' Association?

A. Yes.

Q. And who do you deal with on TIMA?

A. Mainly with doctor J. McCallum. We are going through the animal experiments again.

Q. And the animal experiments you are going through, are those the ones with asbestos or fiberglass?

A. Neither. With refractory fibers.

Q. Factory fibers?

A. Refractory.

MR. GARRARD: Refractory.

BY MR. BRICKMAN:

Q. Oh, okay. Any other work you're doing other than what you have now gone through?

A. No, that's a fair amount.

Q. When you do your work for TIMA, do you charge them $300 an hour, also?

A. No, I am paid a per diem.

Q. What do you get?

A. $2,000 a day, depending on the actual work we do.

Q. Have you met with any attorneys

representing asbestos companies or asbestos manufacturing associations other than Mr. Garrard, Mr. Shaw, and Mr. Crosby?

MR. GARRARD: During what time?

BY MR. BRICKMAN:

Q. In the last year, let's say?

A. No. I met someone in Philadelphia. It was purely social.

Q. Who was that?

A. I'm trying to think. I can't remember this chap's name. It was a very brief meeting. I gave a talk, sort of general talk.

Q. You gave a talk in Philadelphia?

A. In Philadelphia.

Q. What did you speak on, sir?

A. It was at the -- what is the women's college in Philadelphia?

Q. I don't know. What did you speak about? My father-in-law normally says five minutes.

A. The background of the asbestos story and how it developed. I was asked to speak at the university there. This chap happened to be there.

Q. Oh.

A. It's a women's university.

Q. Have you been in the United States in the last year for any other visits other than the Philadelphia visit and the New York visit?

A. The Philadelphia and New York visits were the same visit.

Q. Same visit. Have you been to the United States any other times?

MR. GARRARD: In the last year?

BY MR. BRICKMAN:

Q. In the last year, yes, sir.

A. Not as far as I can recollect.

Q. Have you done any work in the last year for any asbestos company?

A. None at all.

Q. None at all. Do you correspond regularly or irregularly with any doctor that works for an asbestos company?

A. No.

Q. Have you ever done work directly and not through any attorney for the Owens-Corning Fiberglass Company?

A. No.

Q. Sir?

A. I think that's correct. I don't

think. They may be on the refractory fiber, TIMA, may be part of the work for TIMA.

Q. Other than the written reports you have issued in these cases and the report you gave to Mr. Garrard on Crocidolite in the United States, have you done any other written reports that dealt with asbestos this year, in the past year?

A. No.

Q. Other than the reports you have provided me or Mr. Garrard provided me this morning and the other draft reports that you have in front of you today, have you done any other draft reports on these three cases?

A. No. This is all I have done on them.

Q. You did not do any other draft copies that were changed in some fashion for whatever reason?

MR. GARRARD: I don't know where you are getting draft from. I don't think this is a draft.

MR. BRICKMAN: The only reason I say it's a draft, Mr. Garrard, this one has something stamped on it or extra.

THE WITNESS: That's just the letterhead which didn't come out. It didn't come out on the xerox copy.

MR. GARRARD: I think it's just one report, Mr. Brickman, that was copied. When it was copied, I think this top stuff just didn't come out. I don't believe that these are drafts versus final reports.

THE WITNESS: They were all done at the same time.

MR. GARRARD: It's just the fact --

MR. BRICKMAN: They may be draft because one is signed, and one is not.

MR. GARRARD: I think the problem is as they were xeroxed --

THE WITNESS: Too long to get the top in.

MR. BRICKMAN: One is signed, and one is not.

BY MR. BRICKMAN:

Q. Be that as it may, were there any other drafts made?

A. A handwritten draft.

Q. Where is that handwritten draft?

A. That was destroyed once I got hold

of this.

Q. Have you ever met, sir, with any attorney such as Mr. Garrard, Mr. Shaw, and Mr. Crosby when Dr. Gibbs was also present?

MR. GARRARD: I think I may have had a drink in the bar on one occasion when both were there, but I could be wrong. But I don't think we ever had a meeting.

THE WITNESS: We never did have a meeting, but we did have a drink together on one or two occasions.

BY MR. BRICKMAN:

Q. Other than that, y'all haven't had a meeting when you sat down and discussed cases or theories of mesothelioma or anything like that?

A. No.

Q. And Dr. Gibbs apparently replaced you at Pernarth?

A. No. Not exactly, because he is working for the National Health Service mainly, and I was for the Medical Research Council. But he has taken over most of the work.

Q. You mentioned earlier that you were doing some work on Amosite and some tumors out of South Africa.

A. Yes.

Q. Have you visited South Africa in the last year or two?

A. Yes, to see what I could find.

Q. Did you go with Dr. Gibbs or by yourself?

A. By myself.

Q. And have you been there on more than one occasion in the last year?

A. No. I went to see my family but also to inquire about the Amosite situation. The Amosite and the Transvaal Crocidolite.

Q. And was your trip paid for by any company or Mr. Garrard's group or anybody like that?

A. There was a contribution from Mr. Shaw.

Q. Mr. Shaw paid for it?

A. Yes.

Q. Has Mr. Shaw paid for any other trips for you to do research or whatever you did or anything similar like that?

A. Not recently, no.

Q. He has in the past?

A. Let's see. I don't think he has.

I couldn't guarantee this.

Q. You have not gone to do work anywhere else where he has paid for the trip in the last year, to your recollection?

A. No, not in the last year.

Q. And you just don't recollect prior to that time whether he may have paid for some trips somewhere?

A. No.

Q. No, he didn't or, no, you just don't recollect?

A. He came over here, and we went up to Scotland. He paid for that.

Q. Was there something in particular in Scotland that y'all were doing work on, or was this just a social visit to Scotland?

A. No, this was to discuss work with the occupational medical group in Edinburgh.

Q. Which group is the occupational medical group in Edinburgh? There is a particular group of doctors?

A. Anthony Seaton is in charge. It's with the IRA, occupational medicine set up -- mainly set up as a coal research unit.

Q. Mr. Shaw wasn't paying for that

research group to do anything?

A. No.

Q. He was paying for you to be there to meet with them?

A. Yeah.

Q. Okay. Have you written or drafted any papers in the last year, Doctor, other than the reports you already mentioned to me, that you hope to have published?

A. I have done the one thing with Dr. Ilgrin on the spontaneous tumors.

Q. Has that been published?

A. No, it is being submitted for publication.

Q. Who have you submitted it to, sir?

A. I don't remember the name of the journal. Dr. Ilgrin found it. A journal in the States. I can't remember the name of it.

Q. Do you know if he is dealing with any particular doctor over there or anybody --

A. No.

Q. -- who he is trying to get it published through?

A. No, I don't think so. He didn't mention the names.

Q. In your work on spontaneous tumors, have you found that a certain percentage of mesotheliomas in your opinion are spontaneous?

A. Yes.

Q. What percentage is that?

A. It comes to about 20 percent.

Q. 20 percent. And in those 20 percent of spontaneous tumors, did you also find asbestos fibers in the lungs?

A. This was mainly a literature search.

Q. Oh, I see. You did not look at the tissue in those cases?

A. No, just looking at the tissue on this other group of cases.

Q. Was that research funded in any way by anybody?

A. Not as far as I know.

Q. You have not received any money for any time spent on that by Mr. Shaw, Garrard or Mr. Crosby?

A. No. No.

Q. It has not been accepted yet for publication, to your knowledge?

A. No. A few amendments. A few

changes.

Q. You submitted it; it came back to you from whoever looked at it and reviewed it, and they said if you make these changes, we will publish it?

A. Yes. Dr. Ilgrin was dealing with that side.

Q. Any other papers you have published or hope to publish at the present time that you have written in the last year?

A. No. I'm writing an introduction to a Dutch book on asbestos and tumors.

Q. Who is the editor of that book, sir?

A. Dutch Cancer Association.

Q. Are you dealing with anybody in particular?

A. I can't -- I didn't take serious notice -- I've got to do it by the end of the year. I can't remember the exact name of the fellow I've got to write to.

Q. Other than going to Philadelphia to give that lecture --

A. B R Y N M A W R, Bryn Mawr.

Q. Other than that lecture, sir, have

you given any lectures in the last year?

A. I have given lectures to a course in Pernarth.

Q. What's that course, sir?

A. This was the course on DCTD.

Q. ECTD?

A. No. Just a second. DCTD, diseases -- tuberculosis diseases of the chest. I gave them about three lectures a year. I gave a lecture in South Africa on the general situation, and I think that's all.

Q. Okay. The lecture in South Africa, did it deal at all with asbestos?

A. It was all about asbestos.

Q. Is there a typed copy of it or a published copy of it?

A. No. I gave it just on the slides I used.

Q. On the slides?

A. Pictures of various things.

Q. For a second I had thought you said on the sly?

A. No, not that.

Q. Doctor, are you on any medication today?

A. Today, no.

Q. Are you normally on medication?

A. Yes. I'm on a drug for my heart.

Q. Your heart?

A. Yes.

Q. Is there a reason you're not on it today?

A. Yes, sir. The only reason I am not, I didn't take any this morning. I should have.

Q. Should have. Do you have it here? I don't want to have any problems. Do you have it here? Will you take it at lunchtime?

A. Fine, I'll take it at lunchtime.

Q. That's the only medication you're on?

A. Yes.

Q. Doctor, have you been hospitalized in the last year?

A. Only for ten hours, to have a conversion done on the beating of my heart.

Q. Is your heart all right now, as far as you know?

A. As far as I know, yes. Much better than [illegible] this time last year, anyway.

Q. Were you having a problem last year with your heart?

A. Yes.

Q. Okay. And that is being treated and under medication and no problems with it today as long as you are on the medication?

A. Yeah.

Q. Okay. And that's the only thing you have been hospitalized for in the last year?

A. Yes.

Q. Okay. Have you been under the care of any doctor for any other problem in the last year other than your heart?

A. No.

Q. Other than for your heart, have you seen any other doctor in the last year for any reason?

A. No, I don't think so.

Q. No?

A. No.

Q. Other than the medication you're on for your heart, have you been on any other medication in the last year?

A. I can't think of any, no.

Q. I'm sorry, the answer is no?

A. The answer is no.

Q. No other medicine for the last year?

A. Well, no. Last year when I was sort of working around with you, and the heart disease, I got a bit depressed. I was on some drugs then.

Q. Tell me what drugs you were on and whether you are on any of those today.

A. No.

Q. The answer is no, you are not on any of them today?

A. Not today.

MR. GARRARD: Doctor, it's up to you as to whether you want to talk further about medications you may be on or not. I'm not sure that that is anything that is of any business of Mr. Brickman or relevant to anything in this case.

I'm not telling you don't tell him, but I'm telling you I'm not so sure that is anything other than a personal matter of yours, and I don't think that you have to tell him that, but that's up to you.

BY MR. BRICKMAN: