

1 IN THE COURT OF COMMON PLEAS OF
2 WASHINGTON COUNTY, PENNSYLVANIA

COPY

3 -----
4 ESTATE OF BOYD CUTRIGHT,

5 Plaintiffs,

6 -against-

7 A-BEST PRODUCTS COMPANY, ET AL.,

8 Defendants.
9 -----

10 VIDEOTAPE DEPOSITION of the Defendant,
11 FRICTION MATERIALS STANDARDS INSTITUTE, taken by
12 and through its representative, EDWARD W. DRISLANE,
13 held at the Marriott Hotel, 189 Wolf Road, Suite
14 718, Albany, New York, on Thursday, October 24,
15 2002, commencing at 10:00 a.m.; before Peggy Alexy,
16 Shorthand Reporter and Notary Public in and for the
17 State of New York.
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MR. PIAZZA: My name is Thomas Piazza. I reside in Albany, New York. I am a video specialist with Maggard Associates whose principal place of business is Albany, New York. I will be the operator of the audio video equipment for the deposition of Edward Drislane being videotaped 189 Wolf Road, Albany, New York.

Caption of the case is in the Court of Common Pleas of Washington County, Pennsylvania, the Estate of Boyd Cutright, Plaintiffs, versus A-Best Products Company, et al, Defendants. This videotape is being taken on behalf of the Plaintiff. The date is October 24th, and the time is now approximately 10:04.

Counsel will now introduce themselves, please.

MR. DeLUCA: My name is Aaron DeLuca, and I represent the family of Boyd Cutright.

MR. HARKINS: My name is Kevin

Harkins, I represent Friction Materials Standards Institute.

MR. KRAUSE: My name is Robert Krause. I represent Ford, General Motors, and Daimler Chrysler.

MR. LEIBECK: I am Jeff Leibeck. I am here on behalf of N. V. Auto Supply, Inc. and Potomac Creek Auto Parts, Inc.

MR. McGEARY: My name is Hunter McGeary. I am here on behalf of Bong-Warner, Pneumo-Abex, Flintkote and B.F. Goodrich.

MR. PIAZZA: The court reporter will now introduce herself and swear in the witness, please.

THE REPORTER: My name is Peggy Alexy. I am here for Alliance Court Reporting. Mr. Drislane, would you raise your right hand.

EDWARD W. DRISLANE,
having been first duly sworn by the Notary Public,
was examined and testified as follows:

DIRECT EXAMINATION

: 02:41:10 0

BY MR. DeLUCA:

10:02:43:20 0

Q Good morning, Mr. Drislane.

10:02:45:30 0

A Good morning.

10:02:45:40 0

Q Would you state your full name for the

10:02:48:50 0

record, please?

10:02:48:60 0

A Edward W. Drislane.

10:02:52:70 0

Q Mr. Drislane, how old are you today?

10:02:54:80 0

A Seventy-nine.

10:02:54:90 0

Q Sir, I introduced myself earlier. I am

10:03:01:00 0

Aaron DeLuca and I represent the plaintiff in this

10:03:01:10 0

action. Do you understand that?

10:03:01:20 0

A Yes.

10:03:01:30 0

Q And, sir, do you understand that the

10:03:11:40 0

Friction Materials Standards Institute is a

10:03:11:50 0

defendant in this action?

10:03:11:60 0

A Yes.

10:03:11:70 0

Q Okay. And you are appearing today to

10:03:11:80 0

give testimony in response to a subpoena that I

10:03:21:90 0

had issued; correct?

10:03:22:00 0

A Yes.

10:03:22:10 0

Q The first thing I would like to do is I

10:03:22:20 0

would like to mark the Notice of Deposition as

10:03:32:30 0

Plaintiff's Exhibit 1.

: 03:32:40 0

Mr. Drislane, I understand that you have

03:37:10 testified at least twice; correct? Do you recall
10:03:45:20 giving a deposition back in 1982?

10:03:46:30 A I don't recall that one, no. I recall
10:03:50:40 one.

10:03:52:50 Q Do you recall giving a deposition in July
10:03:54:60 of 1999?

10:04:01:70 A Yes.

10:04:01:80 Q I can show you if you like the deposition
10:04:05:90 which I believe that you gave back in 1982 while
10:04:09:10 you were serving --

10:04:11:10 A Okay, if I was serving.

10:04:11:20 Q -- as the Executive Director of the FMSI.
10:04:15:30 Do you want to take a look at that and just tell
10:04:20:40 me if you remember that?

10:04:21:50 A I don't specifically remember it, but
10:04:26:60 there was some deposition taken sometime and I --
10:04:30:70 in my office.

10:04:31:80 Q Throughout the course of this deposition
10:04:33:90 I may refer to the Friction Materials Standards
10:04:37:00 Institute or the FMSI or the Institute, and you
10:04:42:10 understand that I am talking about the same thing;
10:04:46:20 right?

10:04:46:30 A Yes.

10:04:46:40 Q Other than those two instances where you

:04:50:100 gave testimony, have you ever been deposed in any
10:04:54:200 other cases?

A No.

Q I'm sure you remember the process, but I
10:05:00:400 would like to give you some instructions for today
10:05:05:500 if I could. The first is that I will do my best
10:05:09:600 to ask a question that's clear and understandable.
10:05:15:700 But sometimes my questions just don't come out the
10:05:16:800 way I'd like, and if you don't understand a
10:05:20:900 question that I have asked, please let me know and
10:05:21:000 I will be happy to repeat or rephrase it for you,
10:05:24:100 okay?
10:05:28:200

A Yes. Yes.

Q Additionally, as you know, we have a
10:05:30:400 court reporter here who is taking down everything
10:05:31:500 that is said, and it is very important that only
10:05:33:600 one of us speak at a time because she can't take
10:05:37:700 down two people at the same time, all right?
10:05:41:800

A Yes.

Q So it is very important that I let you
10:05:42:000 finish your answer before I ask my next question,
10:05:42:100 and it is important for you to let me finish my
10:05:42:200 question before you begin to answer, do you
10:05:52:300 understand that?
:05:52:400

: 05:54:10 0

A Yes.

10:05:54:20 0

Q I understand that you may need to take

10:06:01:30 0

some breaks today, which is fine. Any time you

10:06:05:40 0

need to take a break, please let us know and we

10:06:07:50 0

will be happy to accommodate you. Although I

10:06:09:60 0

would ask that we not take a break when a question

10:06:13:70 0

is pending, would that be fair?

10:06:15:80 0

A Yes.

10:06:16:90 0

Q Are you on any type of medication today

10:06:18:00 0

that would affect your ability to understand and

10:06:20:10 0

answer my questions?

10:06:21:20 0

A No.

10:06:21:30 0

Q Are you on any type of medication that

10:06:21:40 0

you believe may impair your memory?

10:06:31:50 0

A No.

10:06:31:60 0

Q May I ask, Mr. Drislane, what if anything

10:06:31:70 0

you have done to prepare for this deposition

10:06:31:80 0

today?

10:06:31:90 0

A I have talked to counsel here.

10:06:32:00 0

Q And you have just pointed to Mr. Harkins?

10:06:42:10 0

A Yes, Mr. Harkins.

10:06:42:20 0

Q Have you talked to anyone else?

10:06:42:30 0

A No.

: 06:42:40 0

Q Did you review any documents with

: 06:46:10 0

Mr. Harkins pertaining to the FMSI?

10:07:05:20 0

A Yes.

10:07:05:30 0

Q What types of documents did you look at?

10:07:11:40 0

A Memorandum that I -- I wrote to either

10:07:16:50 0

people on the Asbestos Study Committee or members

10:07:18:60 0

of the Institute relative to the asbestos

10:07:22:70 0

situation.

10:07:24:80 0

Q Were those from the 1970s?

10:07:28:90 0

A Yes.

10:07:28:10 0

Q Were there any other documents that you

10:07:31:10 0

reviewed?

10:07:31:20 0

A No.

10:07:31:30 0

Q Do you have any documents pertaining to

10:07:31:40 0

your employment with the FMSI in your possession,

10:07:31:50 0

like at your house or somewhere else?

10:07:31:60 0

A No.

10:07:41:70 0

Q When you retired from the Institute in

10:07:41:80 0

June of 1989, did you leave everything there, so

10:07:41:90 0

to speak?

10:07:42:00 0

A Yes.

10:07:42:10 0

Q Have you worked anywhere since June of

10:07:52:20 0

1989?

10:07:52:30 0

A Yes.

: 08:02:40 0

Q What have you done since then?

10:08:01:100

A I worked for the United States Government on their census in 1990.

10:08:05:200

10:08:09:300

Q Okay. Anything else?

10:08:11:400

A I worked for my brother's tax service in Albany for two or three winters.

10:08:15:500

10:08:16:600

Q Do you presently serve as a consultant to the FMSI?

10:08:20:700

10:08:22:800

A No.

10:08:24:900

Q Are you being paid for your time today?

10:08:26:1000

A No.

10:08:28:1100

Q Have you had a chance recently to review the testimony you gave back in July of 1999?

10:08:31:200

10:08:31:300

A No.

10:08:31:400

Q Have you spoken to Mr. Laycock, your successor, recently?

10:08:41:500

10:08:41:600

A Not recently, no.

10:08:41:700

Q I would like to begin by asking you to outline your education for me. I understand that you have multiple college degrees. Can you tell me what degrees you have and where you got them?

10:08:51:800

10:09:01:900

10:09:02:000

10:09:02:100

A I have a bachelor of industrial engineering from RPI, that's Rensselaer Polytechnic. I have a bachelor of mechanical engineer from Rensselaer Polytechnic. And I have

10:09:07:200

10:09:12:300

10:09:12:400

:09:22:100 a MBA in accounting from Siena College.

10:09:28:200 Q I understand Rensselaer is a very good
10:09:30:300 engineering school; is that right?

10:09:31:400 A Yes.

10:09:33:500 Q Okay. In what years did you get your
10:09:37:600 engineering degrees from Rensselaer?

10:09:39:700 A 1946, 1947.

10:09:45:800 Q And do you remember when you obtained
10:09:46:900 your MBA?

10:09:48:000 A 1964.

10:09:50:100 Q Did you attend Rensselaer right out of
10:09:51:200 high school?

10:09:54:300 A Yes.

10:09:54:400 Q Upon your graduation in 1947, did you
10:10:00:1500 secure employment anywhere?

10:10:00:1600 A Yes.

10:10:00:1700 Q Where did you go to work?

10:10:11:1800 A Western Electric Company, Kearny,
10:10:11:1900 K-E-A-R-N-Y, Kearny, New Jersey.

10:10:12:2000 Q How long did you work for Western
10:10:12:100 Electric?

10:10:12:200 A One year.

10:10:22:300 Q What did you do there?

:10:22:400 A Work service engineering.

10:28:10

Q Did they manufacture a product at the Kearny plant?

10:31:20

10:33:30

A Yes. Yes.

10:33:40

Q What did they make?

10:35:50

A Manufactured cable.

10:37:60

Q And then following that one year employment, did you go to work somewhere else?

10:43:70

10:45:80

A Yes.

10:45:90

Q Where was that?

10:51:00

A Bendix Friction Materials Division.

10:52:10

Q Where was that located?

10:52:20

A Green Island, New York.

10:52:30

Q How long did you work for Bendix?

10:52:40

A About 17 years.

10:52:50

Q And do you recall the year you left Bendix?

10:52:60

10:52:70

A I can't give it to you exactly, no. It was about 1966, I believe. 1965, maybe. '65 or '66.

10:52:80

10:52:90

10:52:00

Q What positions did you hold with Bendix?

10:52:10

A I was a test engineer and later a cerametallics chief engineer, cerametallics product that's ceramic metallic friction products.

10:52:20

10:52:30

10:52:40

Q And throughout the course of your

11:45:10 0

employment with Bendix, did you just work at that one facility, or did you move around a little bit?

10:11:48:20 0

10:11:52:30 0

A One facility.

10:11:52:40 0

10:12:00:50 0

Q And as a test engineer and as a

10:12:13:60 0

cerametallic engineer, did you have the occasion to work on the formulation of friction materials, including brakes?

10:12:15:70 0

10:12:16:80 0

A Yes.

10:12:18:90 0

Q Did they manufacture friction materials

10:12:21:00 0

at this plant that you worked at?

10:12:21:10 0

A Yes.

10:12:21:20 0

Q Did they manufacture asbestos containing

10:12:21:30 0

brakes at that plant?

10:12:21:40 0

A Yes.

10:12:21:50 0

Q And did they make non-asbestos brakes at

10:12:31:60 0

that plant during that time frame from '48 to '66?

10:12:31:70 0

A I don't understand the question to a

10:12:31:80 0

degree because I already told you I was a

10:12:41:90 0

cerametallics engineering. That was

10:12:42:00 0

cerametallics. That was non-asbestos brakes.

10:12:42:10 0

Q So the answer would be that they made

10:12:42:20 0

both asbestos and non-asbestos brakes at this

10:12:52:30 0

plant between '48 and '66; is that right?

12:52:40 0

A That is correct.

10:12:54:100 Q Did you ever have the occasion to work
10:13:01:200 with a gentleman by the name of Ernie Martin?

10:13:07:300 A Yes.

10:13:07:400 Q Who was Ernie Martin?

10:13:09:500 A Purchasing agent at the Bendix plant.

10:13:11:600 Q The same plant that you worked at?

10:13:13:700 A Yes.

10:13:13:800 Q And did you know him personally?

10:13:16:900 A On business, yes.

10:13:18:100 Q And did you interact with him whenever
10:13:21:100 you needed to make purchases of raw materials?

10:13:31:200 MR. MENDRZYCKI: Objection, form.

10:13:31:300 THE WITNESS: No. Can you state
10:13:31:400 your question again, please?

10:13:31:500 BY MR. DeLUCA:

10:13:31:600 Q Yes, sir. I wanted to know if you had
10:13:31:700 any interaction with him when you needed to do
10:13:41:800 purchasing?

10:13:41:900 MR. MENDRZYCKI: Same objection.

10:13:42:000 THE WITNESS: If I wanted to
10:13:42:100 purchase pencils or something, but I
10:13:52:200 wasn't involved in purchasing of
10:13:52:300 materials for the friction materials.

13:54:10 0 BY MR. DeLUCA:

10:13:54:20 0 Q Okay. Now following your employment with
10:13:54:30 0 Bendix, where did you go to work?

10:14:07:40 0 A For an outfit called C. L. Marvin,
10:14:11:50 0 M-A-R-V-I-N, Marvin, Schenectady.

10:14:16:60 0 Q And what type of business was that?

10:14:18:70 0 A Certified public accountants.

10:14:20:80 0 Q It seems that you made a career change at
10:14:30:90 0 that point?

10:14:31:00 0 A That is correct.

10:14:31:10 0 Q What was the reason for that?

10:14:31:20 0 A Hell, I don't know. Looking for my
10:14:41:30 0 future.

10:14:41:40 0 Q And may I assume that at some point prior
10:14:41:50 0 to working as a CPA, that's when you secured your
10:14:51:60 0 business degree?

10:14:51:70 0 A Before that.

10:14:51:80 0 Q Okay. So you got two engineering
10:15:01:90 0 degrees, you worked as an engineer for a period of
10:15:02:00 0 years, then you went back to school to get a MBA?

10:15:02:10 0 A I went to night school for seven years.

10:15:02:20 0 Q Okay. Then following that once you got
10:15:12:30 0 your MBA, that's when you made the decision to
15:12:40 0 switch professions, so to speak?

10:15:18:100

A Yes.

10:15:18:200

Q And how long did you work for C. L.

10:15:20:300

Marvin?

10:15:20:400

A About six months.

10:15:22:500

Q And at that point did you go on to some

10:15:26:600

other accounting firm?

10:15:26:700

A Yes.

10:15:26:800

Q And who is that?

10:15:30:900

A Haskins and Sells (phonetic).

10:15:31:000

Q Where were they located?

10:15:31:100

A New York City.

10:15:31:200

Q And how long did you work for them?

10:15:41:300

A Well, three or four years. I am not

10:15:41:400

sure. Three or four years.

10:15:41:500

Q Does that take us up to the point when

10:15:51:600

you went to work for the Friction Materials

10:15:51:700

Standards Institute?

10:16:01:800

A Yes.

10:16:01:900

Q And that was sometime in 1970; correct?

10:16:02:000

A I'm not sure on that. It was '70 or '71.

10:16:02:100

Q How is it that you came to be employed by

10:16:12:200

the Friction Materials Standards Institute?

10:16:12:300

A Someone called me from the Institute and

10:16:12:400

asked whether I would be interested in the

16:20:100 position.

10:16:20:200 Q Who was that someone, do you remember?

10:16:22:300 A Yes. Name is Kelly, Jack Kelly.

10:16:26:400 Q Was he employed by Bendix?

10:16:26:500 A At one time he was.

10:16:28:600 Q Is that how you met him?

10:16:30:700 A I knew him at Bendix, yes.

10:16:33:800 Q And how is it, if you know, that
10:16:41:900 Mr. Kelly called upon you to go work for the
10:16:41:000 Institute?

10:16:41:100 A I have no idea. Are you asking how do I
10:16:41:200 know why he called me? I don't know. I mean,
10:16:51:300 what made him call, how would I know that?

10:16:51:400 Q And did he offer you the job?

10:17:01:500 A No. He asked whether I was interested in
10:17:01:600 the job, and I thought about it for a while and I
10:17:01:700 said yes.

10:17:01:800 Q And that that job would allow you to draw
10:17:11:900 upon both your degrees in engineering as well as
10:17:12:000 your business background; right?

10:17:12:100 A Yes.

10:17:12:200 Q And when you took the job, did you
10:17:22:300 relocate?

17:22:400 A No.

10:17:24:100
10:17:26:200
10:17:26:300
10:17:30:400
10:17:31:500
10:17:35:600
10:17:39:700
10:17:41:800
10:17:43:900
10:17:45:1000
10:17:50:1100
10:17:50:1200
10:18:00:1300
10:18:00:1400
10:18:00:1500
10:18:00:1600
10:18:00:1700
10:18:00:1800
10:18:00:1900
10:18:01:2000
10:18:02:2100
10:18:02:2200
10:18:02:2300
10:18:02:2400

Q Where was the Institute located at that time?

A Lexington Avenue in New York City.

Q And at that point when you went to work for the Institute, did you have the opportunity to work with a Harriet Duschek?

A Yes, she was my predecessor.

Q Was there a period of time where you and Miss Duschek worked at the Institute together where she was teaching you the job, so to speak?

A Yes.

Q How long was that period, do you know?

A About six months.

Q And once she retired and you were there as the Secretary and Executive Director, did you continue to work out of that Lexington Avenue address?

A Yes.

Q At some point did you relocate the Institute to New Jersey?

A Yes.

Q When was that, do you remember?

A I would say either '72 or '73, '72 or '73.

18:26:10 0

Q And that's where the Institute remained until your retirement?

10:18:33:20 0

10:18:35:30 0

A Correct.

10:18:37:40 0

Q In 1989?

10:18:39:50 0

A Yes.

10:18:39:60 0

10:18:43:70 0

Q Could you explain to the members of the jury what the FMSI is and what the purpose of the FMSI is?

10:18:50:80 0

10:18:52:90 0

10:19:01:00 0

A Well, the FMSI is the Friction Materials Standards Institute. It's a big name for a small

10:19:01:10 0

company. Basically they would try to gather

10:19:11:20 0

product information on what brakes and clutch

10:19:11:30 0

facings were used on different cars and trucks,

10:19:11:40 0

and pass that information on to all the members.

10:19:21:50 0

This was to help. This was a sales oriented trade

10:19:21:60 0

association, sales oriented trade association.

10:19:31:70 0

All the delegates were generally sales oriented.

10:19:31:80 0

The idea was to get -- so the -- it fostered

10:19:31:90 0

competition in that the -- all these newcomers to

10:19:42:00 0

the business could have the same product

10:19:42:10 0

information that the old timers had generated. So

10:19:42:20 0

it was a means of making sure that no matter who

10:19:52:30 0

you brought your linings from that the thing would

20:02:40 0

fit. It had nothing to do with the product

10:20:03:100 quality or anything like that. That's it.

10:20:05:200 Q And do you have an understanding as to
10:20:11:300 how long the FMSI had been in existence when you
10:20:15:400 took over?

10:20:18:500 A Yes.

10:20:18:600 Q And what is your understanding as to when
10:20:26:700 the FMSI started?

10:20:31:800 A Going back before me. Let's see, well
10:20:33:900 they were in existence, I would say, in 1948,
10:20:35:100 which is when I started with Bendix. They were in
10:20:41:100 existence then. I can't tell you what.

10:20:45:200 Q What happened before then?

10:20:45:300 A What happened before that, and I might
10:20:46:400 have some inklings of what happened but --

10:20:48:500 Q Is it your understanding that there was
10:20:50:600 predecessor organization to the FMSI and that was
10:20:54:700 called the Brake Lining Manufacturers Association?

10:21:01:800 A Yes.

10:21:01:900 Q And is it your understanding that that
10:21:02:000 organization had dated back to the 1930s?

10:21:02:100 A That most likely, yes.

10:21:02:200 Q Okay. In fact, you at one point in your
10:21:12:300 career prepared a history of the Institute, and I
10:21:12:400 know that that was covered with you in your

21:20:10 deposition in 1999, but that you had had certain
21:22:20 documents available to you when you prepared that
21:24:30 history that showed that the Brake Lining
21:26:40 Manufacturers Association dated back at least into
21:30:50 the '30s, as I said?

A Most likely.

Q Okay. And you are also aware, are you
21:33:70 not, sir, that the Brake Lining Manufacturers
21:37:80 Association as well as several of its members were
21:37:90 convicted in Federal Court in New York at about
21:43:10 that 1947, 1948 time period; are you not?
21:48:10

A If that's -- something happened, whether
22:01:20 they were convicted in Federal Court, I don't know
22:01:30 that. Something happened. They got -- there was
22:05:40 some kind of charges. Whether they -- whether
22:07:50 they pleaded or whatever they did, or whether they
22:09:10 were convicted, I don't know for sure. But they
22:11:70 were broken up as a result of that. It was a
22:13:80 voluntarily break up.
22:16:90

Q There was some allegations of price
22:18:00 fixing?
22:21:00

A That's what I would think.

Q And is it your understanding that that
22:23:00 was the impetus to change the name of the
22:24:00

10:22:26:100

Institute?

10:22:28:200

A Yes.

10:22:30:300

Q Okay. And as far as you know, the

10:22:31:400

business of the Brake Lining Manufacturers

10:22:31:500

Association was very similar to the FMSI in that

10:22:37:600

that organization, the first one started this

10:22:45:700

Automotive Data Book that is FMSI has built upon?

10:22:48:800

A That's correct.

10:22:50:900

Q Can you give us an idea over the years of

10:23:01:000

the different types of members the FMSI had in

10:23:05:100

terms of categories of memberships as well as some

10:23:09:200

examples, were there different types of members

10:23:13:300

over the years?

10:23:16:400

A Yes. There were three different types.

10:23:20:500

One was a so-called active member. Active member

10:23:24:600

was a United States resident manufacturer of

10:23:28:700

friction materials, be they brake linings or

10:23:31:800

clutch facings. Regional members were members

10:23:35:900

from outside the United States, who were generally

10:23:39:000

brake lining, brake block or clutch facing

10:23:42:100

manufacturers. Then there was a grade called

10:23:46:200

licensee, which was sort of other groups,

10:23:50:300

primarily brake shoe. That's the steel brake shoe

10:23:54:400

manufacturers, but not brake lining. Those were

10:24:03:100

the three classes.

10:24:03:200

Q So active members, licensee members?

10:24:05:300

A Active members, regional members,

10:24:07:400

licensees.

10:24:09:500

Q Can you give us an example of who some of

10:24:16:600

the active members were of the Institute that you

10:24:18:700

can recall?

10:24:20:800

A Yeah. Well Johns-Manville was an active

10:24:24:900

member of the Institute when I started.

10:24:31:000

Raybestos-Manhattan was an active member. I can't

10:24:37:100

remember the regional members. They were longer

10:24:43:200

names, Rayqueso Columbionos (phonetic), or

10:24:51:300

something like that, foreign names. And licensees

10:24:57:400

were mostly brake shoe manufacturers. Having

10:25:03:500

difficulty.

10:25:09:600

Q That's fine. I'm not trying --

10:25:15:700

A I can't remember.

10:25:21:800

Q This isn't a test. I was just looking

10:25:27:900

for some background. Among active members, did

10:25:34:000

the FMSI count Bendix?

10:25:40:100

A Bendix was a member, yes.

10:25:46:200

Q And how about Delco Moraine?

10:25:52:300

A Yes, they were a member.

10:25:58:400

Q What about Abex?

10:25:31:100

A Yes.

10:25:31:200

Q You had mentioned the first two active members that you mentioned were Johns-Manville and Raybestos-Manhattan; correct?

10:25:39:400

10:25:41:500

A Yes.

10:25:41:600

Q And they were two of the founding members of the FMSI, were they not, charter members?

10:25:45:700

10:25:48:800

A I don't know.

10:25:48:900

Q Was Bendix a member of the FMSI when you started with them in 1948?

10:26:01:000

10:26:03:100

A Yes.

10:26:05:200

Q Sir, do you understand that Johns-Manville and Raybestos-Manhattan have filed for bankruptcy?

10:26:09:300

10:26:11:400

A JM, yes. I don't know about Raybestos. Raybestos filed for bankruptcy. You tell me.

10:26:16:500

10:26:20:600

10:26:22:700

Q I believe that's the case. Do you understand at least as to Johns-Manville that one of the reasons he filed for bankruptcy was in large part due to its asbestos-related liabilities?

10:26:28:800

10:26:31:900

10:26:32:000

10:26:35:100

A Oh, I would think so.

10:26:35:200

10:26:37:300

Q And do you understand that Johns-Manville was aware of the hazards of asbestos as early as

10:26:42:400

10:26:45:100 the 1930s?

10:26:46:200 A No.

10:26:46:300 Q Do you know what knowledge Johns-Manville
10:26:48:400 possessed about the hazards of asbestos?

10:26:50:500 A No.

10:26:52:600 Q At any point in time?

10:26:54:700 A No.

10:26:54:800 Q Same question for Raybestos, do you know
10:27:00:900 when Raybestos knew that asbestos was hazardous?

10:27:01:000 A No.

10:27:01:100 Q Have you heard or have you come to learn
10:27:01:200 that people have alleged that there was a cover up
10:27:11:300 of the hazards of asbestos?

10:27:11:400 A No.

10:27:11:500 Q Sir, have you ever heard of the animal
10:27:21:600 experiments which were done by some of the members
10:27:21:700 of the FMSI at Saranac Lake here in New York?

10:27:21:800 A No.

10:27:21:900 Q If I told you that those animal
10:27:31:000 experiments involved exposing mice to asbestos
10:27:31:100 dust and studying the health affects of that
10:27:41:200 exposure, would that refresh your recollection?

10:27:41:300 A No. How can it refresh recollection if I
10:27:51:400 never recalled it? I don't understand.

10:27:54:100

Q Are you familiar with Dr. Anthony Lanza?

10:28:00:200

A No.

10:28:07:300

Q If I told you he worked for Metropolitan

10:28:09:400

Life Insurance Company, would that help?

10:28:13:500

A No.

10:28:15:600

Q Now when I asked you about the purpose of

10:28:18:700

the FMSI, you went on to describe what I believed

10:28:26:800

is the provision of information to members about

10:28:30:900

various friction materials, correct, that would be

10:28:31:000

the data in these data books?

10:28:31:100

A Yes.

10:28:31:200

Q And that was the primary purpose of the

10:28:31:300

FMSI; was it not?

10:28:31:400

A Yes.

10:28:31:500

Q Would I be correct though, Mr. Drislane,

10:28:41:600

that sometime in the very early 1970s your job

10:28:41:700

with the FMSI changed in that more and more of

10:29:01:800

your time was being spent on asbestos?

10:29:01:900

A I can't give you a yes or no on that.

10:29:02:000

The main part of my work was still the data book

10:29:02:100

in getting that kind of information. The asbestos

10:29:12:200

thing started about '71, as far as I was

10:29:12:300

concerned. And took up time was still probably,

10:29:12:400

if it was five to ten percent of my time, that was

10:29:20:100 it. It was not the big thing was still getting
10:29:24:200 out our data book.

10:29:26:300 Q Okay. Let's go off the record, please.

10:29:30:400 MR. PIAZZA: The time is now 10:32,
10:35:22:500 we will take a pause in the testimony of
10:35:24:600 Mr. Drislane.

10:35:26:700 (A short recess was taken.)

10:35:26:800 MR. PIAZZA: The time is now 10:34,
10:35:28:900 we will resume the testimony of
10:35:30:100 Mr. Drislane.

10:36:24:100 MR. DeLUCA: Could I ask that the
10:36:26:200 last question and answer be read back,
10:36:28:300 please?

10:36:28:400 (The Reporter read back the
10:36:28:500 requested portion.)

10:36:28:600 MR. HARKINS: I object to a display
10:36:31:700 of the document on a screen. This is not
10:36:31:800 the way to properly confront a witness
10:36:31:900 about a prior statement. If you want to
10:36:32:000 ask him and then ask him whether
10:36:42:100 something refreshes his recollection or
10:36:42:200 whether demonstrating something that is
10:36:42:300 not consistent. You can't just display a
10:36:42:400 document during testimony until you

10:36:50:100 establish one of those things. For that
10:36:52:200 reason, I object to that what has just
10:37:00:300 been displayed to the jury. You have
10:37:03:400 published a document without proper
10:37:05:500 authentication or confrontation.

10:37:07:600 MR. DeLUCA: Anything else?

10:37:09:700 MR. HARKINS: That's all for right
10:37:11:800 now, Mr. DeLuca.

10:37:11:900 BY MR. DeLUCA:

10:37:11:000 Q Okay. Mr. Drislane, as we established
10:37:13:100 earlier, you recall being deposed in July of 1999
10:37:15:200 in an asbestos case which was filed in California;
10:37:18:300 do you not?

10:37:20:400 A Yes.

10:37:21:500 Q And at that deposition there was a court
10:37:23:600 reporter present like there is today who is taking
10:37:25:700 down the questions and answers that were given;
10:37:28:800 correct?

10:37:28:900 A Yes.

10:37:29:000 Q And prior to giving that testimony, you
10:37:31:100 swore to tell the truth just like you did today;
10:37:33:200 did you not?

10:37:35:300 A Yes.

10:37:37:400 Q Okay. And I'm going to hand you page 213

10:37:39:100 from that deposition, and ask you to take a look
10:37:45:200 at it, and that's the testimony that I have up on
10:37:48:300 the screen here. And my question is relating to
10:37:52:400 the amount of time you spent on asbestos in the
10:38:00:500 early '70s, you just told me that it was no more
10:38:01:600 than five to ten percent of your time, but back in
10:38:07:700 1999 you told that lawyer under oath that when I
10:38:11:800 worked at FMSI, I thought I was going to do one
10:38:15:900 thing, all of a sudden I am being turned 80
10:38:18:000 percent over to this asbestos thing. Did you give
10:38:21:100 that testimony, sir?

10:38:21:200 MR. HARKINS: I object to the form
10:38:24:300 of the question. It wasn't a question.
10:38:31:400 It was a very long statement, and then it
10:38:31:500 was followed by a question.

10:38:31:600 THE WITNESS: Am I answering your
10:38:35:700 question or what?

10:38:37:800 BY MR. DeLUCA:

10:38:37:900 Q Yes, you are.

10:38:37:200 A I apparently said this. I don't dispute
10:38:42:100 this at all. But if I were to judge right now how
10:38:42:200 much the time was, ten or 15 percent or five or
10:38:42:300 ten percent, it is subjective. I don't see how I
10:38:52:400 can hardly nail that down. One year it might have

10:38:54:100 been ten percent. One year it might have been at
10:39:01:200 the beginning when they threw all those committees
10:39:03:300 at me, it could have been 80 percent. It couldn't
10:39:05:400 have been 80 percent of the total time I spent for
10:39:07:500 the year, but for a week I could be three days on
10:39:13:600 the thing. It could be 60 percent for a short
10:39:16:700 period of time.

10:39:16:800 Q Sir, you agree with there is a tremendous
10:39:18:900 difference between five and ten percent of your
10:39:21:000 time and 80 percent of your time?

10:39:21:100 A I agree.

10:39:21:200 Q And that's what you told this lawyer here
10:39:21:300 in 1999; right?

10:39:21:400 A That was to the best of my memory at that
10:39:31:500 time. You got to remember, I am 79 years old. I
10:39:31:600 was 75 at that particular time. It was all this
10:39:31:700 stuff had happened 25 and 30 years before, and you
10:39:31:800 are expecting me to remember from each different
10:39:41:900 time I get asked a question. I don't have copies
10:39:42:000 of those things.

10:39:42:100 Q Sir, would you think that your memory
10:39:52:200 would be better then than it is today?

10:40:02:300 A It is probably better then than -- I
10:40:02:400 don't -- I can't say.

Q Okay. In any event, would you agree that as your testimony has suggested that when you went to work for the Institute, you did think you were going to be doing one thing, and then suddenly your work, the focus of your work changed to asbestos?

A Not the focus of the work. That would have been the focus of the work was still gathering the product data that we put in the data books.

Q When you went to work for the Institute, were you aware that at least some of your time was going to be spent in regard to asbestos-related issues?

A No.

Q Prior to becoming the Executive Director of the FMSI, did you have any training or experience with asbestos?

A No.

Q Industrial hygiene?

A No.

Q Toxicology?

A No.

Q Medicine?

10:41:30:100

A No.

10:41:31:200

Q I assume that what you know about those particular areas you learned on the job, so to speak?

10:41:43:300

10:41:46:400

10:41:48:500

A Yes.

10:41:48:600

Q Shortly after you began in 1970, did the FMSI organize an Asbestos Study Committee?

10:41:54:700

10:42:11:800

A Yes.

10:42:11:900

Q And did that -- did that committee -- strike that.

10:42:18:100

And was that committee formed in 1971?

10:42:18:100

10:42:24:200

A I don't remember. It was about 1971, but I don't remember whether it was '71.

10:42:28:300

10:42:30:400

Q Sir, as Plaintiff's Exhibit 2, let me hand you Bulletin Number 406 dated July 16th, 1971, which is FMSI 2911, ask you to take a look at that.

10:42:38:500

10:42:38:600

10:42:48:700

A Well, that's when it started now, 1971. It is July 16th, 1971. You have this piece of paper in front of you. I don't.

10:42:48:800

10:42:48:900

10:42:52:000

10:42:52:100

Q What you have in front of you now, sir, I am asking you to take a little look at it, if you would.

10:43:02:200

10:43:02:300

10:43:02:400

Have you had a chance to look at that, sir?

10:43:35:100

A Yes, I have.

10:43:35:200

Q Does that refresh your recollection as to when the Asbestos Study Committee was formed?

10:43:37:300

10:43:41:400

A Yes.

10:43:41:500

Q And that's a document that you prepared as the secretary of the FMSI; is it not?

10:43:43:600

10:43:46:700

A Yes.

10:43:46:800

Q In fact, your name is on the bottom, E. W. Drislane, Secretary, that's you; right?

10:43:52:900

10:44:00:100

A That is correct.

10:44:00:110

Q Okay. And does this document assist you in recalling why the Asbestos Study Committee was formed?

10:44:01:200

10:44:11:300

A Not really, because it was formed because a couple of the members, probably John -- Bill Reitze was Johns-Manville, and people like that thought we should get a committee going. I had no idea. I was brand new to this business.

10:44:13:400

10:44:18:500

10:44:20:600

10:44:24:700

10:44:31:800

10:44:31:900

Q Under "Background" it says, "Well before this talk," and I think it refers to a talk

10:44:32:000

delivered by Mr. Reitze of Johns-Manville, "there had been concern expressed on an Illinois Law

10:44:32:100

10:44:42:200

which would eliminate the use of asbestos in brake linings." Do you remember that?

10:44:42:300

10:44:52:400

44:52:10 0

A I remember that, but I didn't know that until somebody showed me that.

10:45:01:20 0

10:45:03:30 0

Q Okay. Tell me what you remember about that Illinois law that's referenced here?

10:45:05:40 0

10:45:11:50 0

A Very little. I just know that somebody said there was Illinois Pollution Control Board was adopted some kind of a -- some kind of a resolution that there would be no more asbestos brake linings sold in Illinois after so many years, something to that affect. But I didn't know that probably up until this meeting.

10:45:16:60 0

10:45:18:70 0

10:45:22:80 0

10:45:24:90 0

10:45:28:10 0

10:45:30:10 0

10:45:31:20 0

Somebody probably told me at that meeting did you know that.

10:45:35:30 0

10:45:35:40 0

Q Okay.

10:45:37:50 0

A Or maybe it was shortly -- maybe it was months before. I don't know.

10:45:39:60 0

10:45:41:70 0

Q Fair enough. And it was your

10:45:43:80 0

understanding that Illinois was proposing a law

10:45:46:90 0

that would have eliminated the use of asbestos in brakes in that state?

10:45:50:00 0

10:45:52:10 0

A That's correct.

10:45:52:20 0

Q And we live in a society where people

10:46:00:30 0

travel all over the place and move from state to

:46:00:40 0

state, did you understand in 1971 that had

10:46:07:10 0 Illinois passed that law that would have
10:46:11:20 0 essentially eliminated the use of asbestos in
10:46:15:30 0 brakes throughout the United States?

10:46:16:40 0 A I didn't extrapolate that far.

10:46:18:50 0 Q What was your understanding as to what
10:46:23:60 0 would happen to the friction materials industry
10:46:31:70 0 had that Illinois law been passed?

10:46:35:80 0 A I don't recall having any reaction. My
10:46:37:90 0 reaction to the whole thing was it was far fetched
10:46:41:00 0 because I had heard, you know, the origin of all
10:46:45:10 0 this stuff goes back to Irving Selikoff, who was a
10:46:48:20 0 researcher at the Mt. Sinai in New York City, and
10:46:54:30 0 it was based on the spraying of asbestos in the
10:47:03:40 0 shipyard during World War II. And Selikof himself
10:47:05:50 0 said, "We are not out to go and ban asbestos. We
10:47:09:60 0 are trying to regulate it so we can control it in
10:47:11:70 0 the workplace." And that was my understanding.
10:47:15:80 0 So banning of the asbestos by this Pollution
10:47:18:90 0 Control Board I thought was stepping pretty far
10:47:22:00 0 when Dr. Selikoff even said we are not trying to
10:47:30:10 0 ban it.

10:47:32:20 0 Q Is it your understanding, sir, that this
10:47:36:30 0 proposed legislation had it passed would have
10:47:42:40 0 essentially put the asbestos brake manufacturers

10:47:45:100 out of business?

10:47:52:200 A I didn't understand that, no.

10:47:54:300 Q Sir, let me show you the testimony you
10:48:00:400 gave back in 1999, and we cite you to page 92. I
10:48:26:500 will put that up on the screen for you. And as
10:48:30:600 soon as our projector here kicks back on, we will
10:48:31:700 let everyone see that. But in the meantime let me
10:48:35:800 hand you pages 90, 91 and 92 of the deposition you
10:48:50:900 gave in July of '99, and I will ask you to read
10:48:54:000 that. Let's go off the video record, please.

10:49:01:100 MR. PIAZZA: The time is now 10:48,
10:51:21:200 we will take a pause in the testimony of
10:51:28:300 Mr. Drislane.

10:51:31:400 (A short recess was taken.)

10:51:31:500 MR. PIAZZA: The time is now 10:50,
10:51:33:600 we will resume the testimony of
10:51:35:700 Mr. Drislane.

10:51:35:800 BY MR. DeLUCA:

10:51:35:900 Q Mr. Drislane, we were just off the record
10:51:37:000 while I was attempting to get this projector
10:51:39:100 fixed, and I had given you a hard copy of pages
10:51:42:200 90, 91 and 92 of the deposition you gave back on
10:51:42:300 July -- in July of 1999. Have you had a chance to
10:51:52:400 review that?

10:51:54:100 A I have looked at it, yes. I find it very
10:52:01:200 confusing.

10:52:03:300 Q Okay. And the attorney who was
10:52:05:400 questioning you on that day asked you a very
10:52:09:500 similar question pertaining to the affect of the
10:52:15:600 proposed Illinois law, and did you or did you not
10:52:22:700 state that it would put everybody out of business?

10:52:26:800 A That's what these minutes here say, but
10:52:28:900 as I say, I am having great difficulty reading the
10:53:15:100 rest of these minutes.

10:53:18:100 Q Thank you, sir. Sir, do you recall at
10:53:21:200 that deposition that you were given the right to
10:53:24:300 read the transcript to see if there were any
10:53:26:400 mistakes in the way that the court reporter
10:53:31:500 transcribed the questions and answers and that you
10:53:31:600 waived that right, do you remember that?

10:53:33:700 A No, I do not.

10:53:35:800 Q Okay. Does this refresh your
10:53:41:900 recollection as to whether or not you took the
10:53:42:000 opportunity to read and sign?

10:53:42:100 A I'm sorry, where are you starting? Am I
10:53:42:200 looking up on top or what?

10:53:52:300 Q Sure. It says here, and this is on page
10:54:02:400 355, I believe, it says, "Mr. Drislane, earlier

off the record you were instructed that if you so desire you can take a look at the -- you can have the transcript the stenographer is going to compile from your testimony today, you can have the opportunity to look at that transcript in order to review it and make any corrections if you see any mistakes on the record, and also sign that you have read this transcript and reviewed it. Do you wish to have that opportunity?" And the answer you gave was, "No, I do not."

A Okay. Yes.

Q I just I want you to be aware of that.

A Well I'm reading it now and I find that very difficult. I don't understand. I don't understand parts of it.

Q Okay.

A What I wanted to do was have that thing over with. I didn't want to go and be reviewing your work. Not your work, that gentleman's work.

Q All right. I would like to go back to Exhibit 2.

A Uh-huh.

Q That's both Bulletin 406 from July 16th, '71, and ask you about the relationship between

10:55:13:100 the FMSI and the AIA, the Asbestos Information
10:55:15:200 Association. You are familiar with the AIA?

10:55:18:300 MR. HARKINS: I object to the form
10:55:20:400 of the question because it is complex.
10:55:20:500 It started with a statement and ended
10:55:24:600 with a question.

10:55:26:700 BY MR. DeLUCA:

10:55:26:800 Q Are you familiar with the AIA?

10:55:30:900 A Yes.

10:55:30:100 Q The AIA was formed by the asbestos
10:55:31:100 companies of North America; was it not?

10:55:31:200 A I don't know.

10:55:31:300 Q Does your memo that you have in front of
10:55:41:400 you under AIA, Asbestos Information Association of
10:55:41:500 North American, does it state that this
10:55:41:600 association was recently formed by the asbestos
10:55:50:1700 companies of North America?

10:55:50:1800 A That's what someone had told me.

10:55:51:900 Q And was it the intention of the FMSI to
10:56:00:2000 work closely with the AIA on asbestos-related
10:56:00:2100 issues that would impact the brake lining and
10:56:11:2200 clutch facing industry?

10:56:11:2300 A We were not going to work with them. We
10:56:11:2400 were going to take whatever information they had

10:56:18:100 and use it for our -- use it to help us understand
10:56:22:200 and work with the regulations. But we were not
10:56:24:300 going to work or mesh our work with theirs, no.
10:56:30:400 That maybe what it said. I am talking what
10:56:31:500 happened. This here is a 1971. This whole thing
10:56:37:600 was just started. Right after not too long after
10:56:41:700 I had just started.

10:56:43:800 Q So what you are telling me, if I
10:56:45:900 understand you, sir, is that maybe in 1971 the
10:56:50:100 Institute intended to work with the AIA, but
10:56:52:100 that's not the way things worked out?

10:56:54:200 A That's correct. Some of our people did
10:57:01:300 not want us to get too close to AIA.

10:57:05:400 Q Why is that?

10:57:05:500 A I don't know. They felt that they were
10:57:09:600 steering us in the wrong direction or something
10:57:11:700 like that.

10:57:11:800 Q Was it that the brake lining
10:57:15:900 manufacturers didn't want to be associated in the
10:57:19:000 mind of the public with people like Johns-Manville
10:57:22:100 and Raybestos who had made other asbestos
10:57:24:200 containing products?

10:57:26:300 A That could have been, but I don't believe
10:57:30:400 it was. I don't know what makes people do things.

Q Over the course of your career with the Institute you have come to know various individuals who were employed by the AIA, have you not?

A Yes.

Q You had the occasion to interact with Mr. Marinos?

A Yes.

Q And who was he?

A He was -- he was like I was. He was Executive Director of the AIA.

Q You came to know an individual by the name of Matthew Swetonic; did you not?

A He is a name that appeared someplace, but I don't even know when he is when you say that now. That name I recall.

Q If I told you that he was with the public relations firm of Hill and Knowlton, and then Johns-Manville.

A That could be, yes.

Q And you knew Mr. Robert Pigg as an individual employed by the AIA?

A Yes.

Q In fact, you had Mr. Pigg come and speak

10:58:31:100 to the membership of the FMSI on a few occasions;
10:58:37:200 did you not?

10:58:39:300 A Yes, I am always looking for cheap
10:58:41:400 speakers.

10:58:43:500 Q Okay. And the AIA was more than happy to
10:58:46:600 send Mr. Pigg to your meeting to talk about the
10:58:50:700 efforts of the AIA in regard to asbestos; were
10:58:54:800 they not?

10:58:54:900 A I don't know what he talked about.

10:59:01:000 Q You would tend to agree that it would be
10:59:03:100 about asbestos; right?

10:59:03:200 A Oh, yes.

10:59:05:300 Q He wasn't there to talk about sports or
10:59:13:400 hunting or cooking, or anything like that; right?

10:59:15:500 A Correct.

10:59:16:600 Q Okay. All right. Have you ever attended
10:59:18:700 any meetings of the AIA?

10:59:21:800 A Yes.

10:59:21:900 Q And were they held in Washington, D.C.?

10:59:24:000 A Arlington, or someplace down that way.

10:59:26:100 Q Suburb of D.C.?

10:59:28:200 A Yes.

10:59:28:300 Q And you would agree with me that the AIA
10:59:32:400 was essentially a lobbying organization that acted

10:59:41:100

on behalf of the asbestos industry?

10:59:45:200

A That was part of it, but they were more.

10:59:46:300

They provided us information in addition to

10:59:48:400

whatever they did, told us what laws were coming

10:59:50:500

up, and what hearings were coming up, and things

10:59:52:600

like that. They kept us posted on what was going

11:00:00:700

on in Washington.

11:00:01:800

Q Sir, when the AIA would furnish various

11:00:05:900

groups or government bodies with information,

11:00:07:100

do you believe that they presented a balanced view

11:00:11:100

of the situation, or did they just present the

11:00:13:200

information that was to the benefit of industry?

11:00:15:300

A I don't know how to answer, but I would

11:00:21:400

imagine they were sending stuff that took

11:00:24:500

advantage of the industry.

11:00:24:600

Q And one of the things that they would do

11:00:28:700

is that, when I say "they," I mean the AIA, the

11:00:31:800

AIA would comment on proposed rules or regulations

11:00:37:900

or legislation and advance industries view as to

11:00:42:000

why the rules and regulations were perhaps too

11:00:42:100

severe or too difficult in it; correct?

11:00:52:200

A I -- can you rephrase the entire question

11:00:52:300

or statement?

11:01:02:400

Q Sure. Sure. Actually maybe I will have

11:01:01:100 her read it back and if you still have a problem
11:01:03:200 with it, I will rephrase because I want to make
11:01:31:300 sure I ask you the same question, okay?

11:01:33:400 A Yes.

11:01:35:500 (The Reporter read back the
11:01:35:600 requested portion.)

11:01:35:700 THE WITNESS: I don't know what AIA
11:01:37:800 did. They did not keep me informed of
11:01:39:900 everything they did.

11:01:41:000 BY MR. DeLUCA:

11:01:41:100 Q Over the course of your career, you did
11:01:41:200 receive certain documents from the AIA, you would
11:01:41:300 be copied on various memos, on letters, and things
11:01:51:400 like that?

11:01:52:500 A Yes.

11:02:01:600 Q Okay. Now I would like to see if you and
11:02:03:700 I can agree on a few things. And I'm just looking
11:02:09:800 for your view on certain things based upon your
11:02:13:900 knowledge, experience, training and your work with
11:02:19:000 the FMSI, all right? First of all, Mr. Drislane,
11:02:22:100 do you believe that asbestos is a cancer causing
11:02:32:200 agent?

11:02:32:300 MR. KRAUSE: Objection, foundation.

11:02:32:400 THE WITNESS: I believe asbestos has

caused cancer in certain people, yes.

BY MR. DeLUCA:

Q People exposed to asbestos?

A People exposed to some asbestos, yes.

Q Do you agree that all types of asbestos, including Chrysotile can cause cancer?

MR. KRAUSE: Same objection.

THE WITNESS: I don't know. I know you are driving towards Ike Weaver's statement that all types of asbestos can cause cancer, but I don't know that I -- I don't know that the Chrysotile -- talking mesothelioma, which is a type of cancer?

BY MR. DeLUCA:

Q Yes, sir.

A Mesothelioma.

Q Yes, sir.

A I don't believe that Chrysotile causes that, but Ike does.

Q I am just asking you for what you think. And am I correct that you don't think that Chrysotile asbestos can cause mesothelioma?

A That's correct.

MR. McGEARY: Object to the line of question. The witness indicated he is not competent by education or training to give these type of answers.

MR. DeLUCA: Well I'm not asking him from the same perspective that I would ask a pathologist, but I'm looking for the opinions he held as the Executive Director of the FMSI.

MR. HARKINS: Well then I am going to object because your questions were all phrased in the present tense, whether he currently believes, and they were not -- they did not seek his opinions while the Director of the FMSI.

BY MR. DeLUCA:

Q If for the purposes of the next questions I ask you your opinions are different now than they were between 1970 and 1989, I will expect you to tell me that, fair enough?

A Yes.

MR. HARKINS: I object to the form of the question, because it presumes that the witness has an ability to delineate

11:04:45:100 what his opinions were over a span of
11:04:46:200 some 17 or 18 years. And request that he
11:04:52:300 conduct that exercise for you going back
11:04:54:400 as many as 30 years.

11:05:00:500 MR. McGEARY: I am objecting to the
11:05:01:600 line of the questioning, whether 1971 or
11:05:03:700 today because his education, training and
11:05:05:800 competence haven't changed over the years
11:05:09:900 unless he went back to medical school or
11:05:11:000 something like that. I don't think that
11:05:13:100 is the testimony. If you give me a
11:05:15:200 continuing objection, but I am concerned
11:05:17:300 that being shown to the jury when he
11:05:19:400 doesn't have the background to give an
11:05:21:500 opinion.

11:05:23:600 MR. DeLUCA: Well at this point I am
11:05:25:700 going to make a request of you all to
11:05:27:800 refrain from making speaking objections.
11:05:29:900 If you have an objection, state it
11:05:32:000 succinctly and let me move on. I really
11:05:34:100 want to avoid these side bar issues on my
11:05:36:200 video.

11:05:38:300 MR. KRAUSE: You can't avoid side
11:05:40:400 bar issues if you are going to keep

05:41:10 asking these kind of questions. I also
11:05:43:20 would like a continued objection to this
11:05:48:30 type of questioning.

11:05:48:40 MR. DeLUCA: I will grant that to
11:05:50:50 you. I will grant that to you.

11:05:52:60 BY MR. DeLUCA:

11:05:54:70 Q Backing up a little bit. I had asked you
11:06:03:80 whether you thought that all types of asbestos
11:06:05:90 could cause cancer, including Chrysotile, and you
11:06:09:10 had kind of changed the focus to mesothelioma.

11:06:15:10 Let me approach those questions one at a time.
11:06:16:20 Do you believe -- well let me strike that.

11:06:18:30 Let me ask you for the opinions that you had
11:06:20:40 when you were employed by the Institute, all
11:06:24:50 right? Not what you believe now, but what you
11:06:28:60 believe then. Did you believe as Executive
11:06:30:70 Director of the Institute that all types of
11:06:33:80 asbestos could cause cancer, including Chrysotile?

11:06:35:90 A In 1971 or so when I started, about the
11:06:40:00 time I started, whether I started in '70 or '71,
11:06:42:10 I'm not sure, but I didn't believe asbestos was a
11:06:50:20 problem. I didn't know. I was brand new to this
11:06:52:30 whole thing. And after about five or six years,
07:02:40 the first warning that we had in our book was a

11:07:05:100 thing that this could be -- asbestos could be
11:07:09:200 harmful to your health. And then the later
11:07:15:300 warnings really were whatever the occupational,
11:07:16:400 OSHA, Occupational Safety and Health
11:07:18:500 Administration said, you know. This didn't say
11:07:22:600 maybe. I guess it says it is, or something like
11:07:24:700 that. If you look at the warnings that went down
11:07:28:800 each year, each two or three years, they get
11:07:31:900 stiffer all the time as the regulations got
11:07:37:100 stiffer. Basically the government didn't know
11:07:39:100 that all of these things caused the cancer.

11:07:41:200 In other words, as you see I am rambling, and
11:07:43:300 that's what is going to be written down in all
11:07:44:400 these minutes. There was a change from the
11:07:50:150 beginning to the end as, I guess, my attorney has
11:07:54:600 suggested. What did I think when I finished up
11:08:01:700 there? I said, you know, all kinds of asbestos
11:08:03:800 have cancer things. But I still in my own there
11:08:09:900 was something about the Chrysolite, which was not
11:08:12:000 used in brake linings at all. Chrysolite was
11:08:12:100 apparently one of the main causes of the
11:08:12:200 mesothelioma, but Chrysolite was not used in brake
11:08:22:300 linings that I know of. It was Chrysotile.

Q Are you familiar with a company called

:08:28:10 0 Maremont?

11:08:30:20 0 A Yes.

11:08:30:30 0 Q Did you know that they used Chrysolite in
11:08:31:40 0 their brakes?

11:08:31:50 0 A I didn't know that.

11:08:33:60 0 Q When you talk about the first warning
11:08:35:70 0 that the Institute gave, are you talking about the
11:08:39:80 0 recommended procedures that were attached as the
11:08:41:90 0 last page of the Automotive Data Book?

11:08:41:00 0 A That was one of the means of broadcasting
11:08:51:10 0 the problem, yes.

11:08:51:20 0 Q That was first published in 1977?

11:08:51:30 0 A Is that right? You know better than I do
11:09:01:40 0 then.

11:09:01:50 0 Q Are you aware of any warning that was
11:09:01:60 0 given by the Institute prior to 1977?

11:09:01:70 0 A There was a little blue book we put out,
11:09:11:80 0 which was, I think, was about 1976. I think.

11:09:11:90 0 Q Did that blue book discuss the
11:09:22:00 0 possibility that exposure to asbestos could cause
11:09:22:10 0 cancer?

11:09:22:20 0 A I can't remember exactly, but that's what
11:09:32:30 0 I gathered it said.

:09:32:40 0 Q Certainly the Institute possessed that

11:09:33:100 information in 1976?

11:09:35:200 A It possessed whatever information I
11:09:39:300 showed in that book. I don't remember what was in
11:09:43:400 that book.

11:09:43:500 Q If the Institute were to have had
11:09:46:600 knowledge that exposure to asbestos could cause
11:09:48:700 cancer or mesothelioma, and yet did not publish it
11:09:52:800 in the 1976 blue book or the 1977 insert in the
11:10:01:900 Automotive Data Book, do you have any explanation
11:10:07:100 for that as to why that may have occurred?

11:10:11:100 A No. I just can't do everything. That's
11:10:15:200 all.

11:10:15:300 Q Do you think that had the Institute known
11:10:16:400 of the risk of cancer they should have put that in
11:10:21:500 the blue book and in the Automotive Data Book?

11:10:21:600 A Had -- say it again.

11:10:31:700 Q Had the Institute been aware of the
11:10:33:800 possible relationship between exposure to asbestos
11:10:35:900 and cancer, shouldn't they have put that in these
11:10:37:000 books, the blue book and that --

11:10:42:100 A If they were certain of it, yes.

11:10:42:200 Q How certain did they have to be, sir?

11:10:42:300 A One memo would not make certain to me.

11:10:42:400 In other words, two memos might not. But if there

10:50:100 was some study made by Dr. Selikoff or somebody
11:10:54:200 over at Mt. Sinai that said so, I would probably
11:11:01:300 agree.

11:11:03:400 Q Are you aware of Dr. Selikoff's 1964
11:11:05:500 article entitled "Asbestos Exposure and
11:11:07:600 Neoplasia"?

11:11:09:700 A No, I am not.

11:11:11:800 MR. DeLUCA: Off the video record,
11:11:13:900 please.

11:11:13:000 MR. PIAZZA: The time is now 11:10,
11:17:31:100 we will take a pause in the testimony of
11:17:54:200 Mr. Drislane.

11:17:54:300 (A short recess was taken.)

11:19:37:400 MR. PIAZZA: Time is now 11:18, we
11:19:41:500 will resume the testimony of
11:19:43:600 Mr. Drislane.

11:19:43:700 BY MR. DeLUCA:

11:19:43:800 Q Mr. Drislane, before we took a break I
11:19:48:900 was asking you about the various warnings that the
11:19:52:000 Institute gave concerning asbestos, the blue book
11:19:54:100 that you mentioned that you believe was from the
11:20:01:200 1976 time frame, as well as the one page insert in
11:20:05:300 the Automotive Data Book, which I believe was
20:02:400 first given in 1977. I will have some documents

11:20:13:10 0 later that can confirm that date for you, but I
11:20:16:20 0 will represent to you that that's what I have been
11:20:20:30 0 told. And I asked you whether if the Institute
11:20:24:40 0 was aware of the possible association between
11:20:28:50 0 exposure to asbestos and cancer, whether that
11:20:35:60 0 information should have been given in those
11:20:37:70 0 warnings, do you recall what you just told me?

11:20:39:80 0 A Not really. We had a warning in there.
11:20:43:90 0 What more of, obviously, there was some problem
11:20:46:10 0 with asbestos or we wouldn't have had those
11:20:48:10 0 warnings in that blue book or that page in the
11:20:51:20 0 Automotive Data Book, but that warning was going
11:21:01:30 0 to our members who were then to disseminate it to
11:21:05:40 0 the trade. I mean, people working let's say at
11:21:09:50 0 Bendix, would get these things and distribute it
11:21:13:60 0 to their customers, rebuilders and stuff like
11:21:15:70 0 that, and it was their job to go and get this
11:21:18:80 0 information out to the public. We were giving
11:21:21:90 0 this information to the people who we dealt with,
11:21:24:00 0 our members, isn't that what -- is that what you
11:21:26:10 0 are asking?

11:21:28:20 0 Q I'm asking you, sir, whether the
11:21:32:30 0 Institute, if it was aware of the relationship
11:21:34:40 0 between asbestos and cancer, should have put that

11:21:37:100 information in these warnings, do you think they
11:21:39:200 should of?

A Let me see what we said.

Q Well what I'm going to do is I am going
11:21:41:400 to hand you what was marked as Exhibit 14 to
11:21:45:500 Mr. Laycock's June 2002 deposition, which is a
11:21:48:600 copy of the 1977 Automotive Data Book.
11:21:52:700

A Is that the first year that the notice
11:22:00:800 appeared in there?
11:22:01:900

Q Yes, sir. First of all, I am going to
11:22:03:000 ask you, do you recognize that as the 1977 book?
11:22:05:100

A Yes.
11:22:11:200

Q And that was Plaintiff's 14; right?
11:22:11:300

A What's that?
11:22:13:400

Q That was marked Plaintiff's 14 on the
11:22:15:500 cover?
11:22:16:600

A Okay.
11:22:16:700

Q So is that what it says, sir?
11:22:18:800

A Plaintiff's Exhibit 14.
11:22:20:900

Q All right. And the one page warning that
11:22:22:000 we are talking about appears on the last page;
11:22:24:100 right?
11:22:26:200

A Yes.
11:22:42:300

Q Take a look at that for a moment.
11:22:42:400

11:22:45:100

A This was based on our knowledge at that time.

11:22:48:200

11:22:50:300

Q In 1977, did this warning reflect the full knowledge of the Friction Materials Standards Institute?

11:22:52:400

11:23:00:500

A As best I can tell, yes.

11:23:00:600

11:23:01:700

Q Now let's look at that warning.

11:23:03:800

A Which warning, the one over on the left or the one on the right?

11:23:05:900

11:23:07:100

Q Both of them, sir.

11:23:09:100

A Yeah.

11:23:09:200

Q And you can look at the full page in the document that you have in front of you.

11:23:11:300

11:23:21:400

A Yes.

11:23:21:500

Q Does this document at any place mention cancer?

11:23:21:600

11:23:21:700

A Apparently not.

11:23:31:800

Q And is it your position, sir, that this warning reflected the full knowledge of the FMSI in 1977?

11:23:31:900

11:23:42:000

A Yes.

11:23:42:100

11:23:42:200

Q Okay. Could I have that back?

11:23:42:300

A We didn't know for positive. Whatever you in as a back seat driver 20 years later are

11:23:52:400

able to go and say, at that time this is what we knew.

Q Now we talked earlier about the Asbestos Study Committee, and do you recognize Ike Weaver of Raybestos-Manhattan as being the first chairman?

A No.

Q Was it Dr. Stefl from --

A Yes.

Q -- from Raybestos that was the first chairman?

A Yes.

Q After his work with the Asbestos Study Committee, then Mr. Weaver became the chairman; correct?

A I believe so.

Q And you have held Mr. Weaver in high regard; have you not?

A Yes and no. He vacillated on many things. I can remember one time I took him up to the local dealer to get his BMW serviced, he was having trouble. And three times he changed his mind as to whether to stay there for the work. He used to drive me crazy.

11:25:07:100

Q Okay. Well, other than some personal

11:25:09:200

quirks he may have had, did you view him as

11:25:09:300

someone who was knowledgeable about asbestos and

11:25:15:400

asbestos-related disease?

11:25:16:500

A Yes.

11:25:16:600

Q In fact, you thought he was a sharp

11:25:20:700

person; did you not?

11:25:20:800

A I thought he was a knowledgeable person.

11:25:24:900

Sharp, I don't know that. Give me your

11:25:26:100

definitions of "sharp" and all that. He is a

11:25:31:100

knowledgeable person.

11:25:31:200

Q All right. Let me show you what you said

11:25:35:300

on page 139 of that deposition.

11:25:37:400

A Okay. I said that I had. Jesus Christ,

11:25:39:500

go back every word I said at that time is going to

11:25:41:600

be checked to see what I say now. I said "sharp"

11:25:41:700

then. I say "knowledgeable" now.

11:25:51:800

Q And would you agree that he knew more

11:26:01:900

about asbestos than you did?

11:26:02:000

A Yes.

11:26:02:100

Q Now the Asbestos Study Committee would

11:26:02:200

have meetings at various points in time, and there

11:26:02:300

would be minutes of those meetings; correct?

11:26:12:400

A Yes.

11:26:15:100

Q And those minutes were generally shared

11:26:16:200

with the general membership at the annual

11:26:20:300

membership meeting; were they not?

11:26:22:400

A I don't think so.

11:26:22:500

Q Did the Asbestos Study Committee give an

11:26:26:600

annual report to the membership of the FMSI?

11:26:30:700

A Yes.

11:26:30:800

Q And the FMSI would generally hold annual

11:26:33:900

meetings in June of each year?

11:26:35:1000

A Yes.

11:26:35:100

Q Usually at a nice resort located

11:26:35:200

throughout the country?

11:26:41:300

A Yes.

11:26:41:400

Q Do you recall attending a meeting held in

11:26:45:500

Vail, Colorado in 1973?

11:26:46:600

A Yes.

11:26:48:700

Q And you attended that meeting as the

11:26:51:800

Executive Director and Secretary?

11:26:54:900

A Yes.

11:27:02:000

Q And various people gave addresses at the

11:27:12:100

meeting, including Mr. Weaver?

11:27:15:200

A Yes.

11:27:15:300

Q As Plaintiff's Exhibit 3 I am going to

11:27:18:400

hand you a document that bears the Bate stamps

11:27:22:100 FMSI 0082 through 00088, and ask you to take a
11:27:31:200 look at it, and I will ask you whether this is the
11:27:37:300 document you referred to earlier in your testimony
11:27:39:400 about the Weaver paper?

11:27:41:500 A I don't remember calling it the "Weaver
11:27:43:600 paper."

11:27:45:700 Q The Weaver address, or something of that
11:27:46:800 nature?

11:27:46:900 A This is -- this was what I delivered to
11:27:48:000 that meeting, yes.

11:27:50:100 Q Okay. You want to take a few minutes to
11:28:01:200 look at it, or are you pretty familiar with what's
11:28:02:300 in here.

11:28:04:400 A (The witness is perusing the document.)

11:28:04:500 Q Sir, if you would like to go off the
11:28:06:600 record to review the whole document, we can do
11:28:08:700 that, or I can walk you through the portions --

11:28:09:800 A No. Walk me through it then.

11:28:09:900 Q All right.

11:28:12:000 A Do you want this back?

11:28:12:100 Q No. You can keep it in front of you.
11:28:15:200 And, sir, you may have an easier time with these
11:28:16:300 questions if you look at the screen because I have
11:28:18:400 the portions of this memo that I am interested in

11:28:52:100

outlined for you. Mr. Weaver was engaged in a study of asbestos and asbestos-related issues not only for the FMSI Asbestos Study Committee, but his employer Raybestos; was he not?

11:29:01:200

11:29:05:300

11:29:09:400

11:29:11:500

A I don't know.

11:29:11:600

Q Okay. Do you recall?

11:29:13:700

A I mean, I don't know about him what he does for his employer. I know what he did with FMSI.

11:29:15:800

11:29:18:900

11:29:20:000

Q Do you know what his position was with Raybestos?

11:29:21:100

11:29:21:200

A Not now I don't.

11:29:21:300

Q And did Mr. Weaver report on a meeting that was held in France by the IARC, the International Agency for Research On Cancer?

11:29:21:400

11:29:31:500

11:29:31:600

A Is this written from that particular -- is this thing that's highlighted over here on the right in here?

11:29:31:700

11:29:31:800

11:29:41:900

Q Yes, sir.

11:29:42:000

A Well if it is in here, then yes.

11:29:52:100

Q Okay. And do you recall Mr. Weaver making certain conclusions and recommendations during this address?

11:29:52:200

11:30:02:300

11:30:02:400

A I don't remember all this stuff. I see

11:30:03:100 the thing in paper, I will say yeah, that's what
11:30:07:200 he -- this is what he said, but I don't remember
11:30:07:300 it, no.

11:30:09:400 Q That exhibit that I have in front of you,
11:30:13:500 is that something that you prepared?

11:30:16:600 A Well, this, yes, this is the -- this is
11:30:20:700 apparently meeting, I don't know what it was.

11:30:22:800 Q Well that was Exhibit 14.1 to the minutes
11:30:24:900 of the annual meeting?

11:30:26:100 A Okay. That was in a report pack that
11:30:31:100 went with the minutes of the meeting. All right.
11:30:31:200 Okay.

11:30:31:300 Q Yes, sir. You prepared that; correct?

11:30:31:400 A Yes, that's correct, but I prepared it
11:30:31:500 from whatever Ike gave me.

11:30:31:600 Q And in your preparation of these types of
11:30:41:700 reports and exhibits and minutes you worked very
11:30:41:800 hard to take accurate, trustworthy, reliable
11:30:41:900 notes; did you not?

11:30:52:000 A Of course, yes.

11:30:52:100 Q You prodded yourself on professionalism
11:30:52:200 and your accuracy; right?

11:30:52:300 A I -- see when you are saying this, when
11:31:02:400 you say "accuracy," I can say I can repeat what

11:31:03:100 was said of things that I took down at the
11:31:11:200 meeting, but I can't say for the accuracy of
11:31:13:300 whatever this particular person said, or I don't
11:31:16:400 know that. But this is what was given to me by
11:31:24:500 Ike Weaver as his talk.

11:31:26:600 MR. DeLUCA: Off the video record.

12:20:33:700 MR. PIAZZA: The time is 11:30, we
12:20:37:800 will take a pause in the testimony of
12:23:52:900 Mr. Drislane.

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(After a luncheon recess, the
proceedings reconvened at 12:23 p.m.)

MR. PIAZZA: The time is now 12:23,
we will resume the testimony of
Mr. Drislane.

BY MR. DeLUCA:

Q Mr. Drislane, good afternoon. I want to
go back to some of the issues that we were
covering before we took a break for lunch and go
back to the 1977 recommended procedures for
reducing asbestos dust during brake servicing that
appeared in the FMSI Automotive Data Book, okay?
And you and I had reviewed the language that
appeared in that warning, and I had asked you
whether it contained any reference to cancer, and
I believe you said that it did not, do you recall
that?

A I believe so, yes.

Q You agree with me that it does not
contain any reference to cancer?

A That doesn't say cancer up there.

Q That's right?

A Right.

Q Okay. And I had asked you whether you

12:25:48:100

believed that this warning reflected the knowledge that the FMSI possessed in 1977?

12:25:52:200

12:26:01:300

A Yes.

12:26:01:400

Q You believe that it does, that it did?

12:26:05:500

I'm sorry, I didn't mean to step on you. You believe that it did?

12:26:07:600

12:26:07:700

A Yes. You must remember that this is not

12:26:09:800

my wording. This is a group sitting down at a

12:26:13:900

table picking out the wording that is to go with

12:26:18:1000

the thing based on possibly what was suggested by

12:26:24:1000

their members and all that. It was something that

12:26:28:2000

was put together with some people probably saying

12:26:31:3000

we should say, yes, we should say "danger," we

12:26:35:4000

should say "cancer," and other people saying, "No,

12:26:38:5000

you should word it this way here." Whatever it

12:26:41:6000

was, it was the judgment of the people at that

12:26:45:7000

particular meeting as to what the words should be.

12:26:48:8000

Q And who would the people have been?

12:26:51:9000

Would they have been members of the Asbestos Study

12:26:55:0000

Committee that would have been responsible for

12:26:58:1000

this?

12:26:59:2000

A Yes.

12:26:59:3000

Q And those individuals would have been

12:27:00:4000

officers or directors of your member companies;

12:27:01:100

correct?

12:27:01:200

A No.

12:27:01:300

Q Who would they have been?

12:27:03:400

A People who volunteered. I can't say they volunteered as such, but the various companies who were interested in the thing at this particular time, the whole thing was started by Johns-Manville, and I believe Raybestos who are the ones. So you got volunteers from different companies to go and serve on the committee. And those were the ones that they weren't necessarily the delegates or anything else. I don't think any of them were the delegates. They were people who had some expertise in this area.

12:27:07:500

12:27:09:600

12:27:13:700

12:27:16:800

12:27:20:900

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12:27:21:100

12:27:21:200

12:27:31:300

12:27:31:400

12:27:31:500

Q There were individuals on the Asbestos Study Committee that were employed by other companies than just Johns-Manville and Raybestos; correct?

12:27:31:600

12:27:41:700

12:27:41:800

12:27:41:900

A That is correct.

12:27:42:000

Q And before the Institute would publish something like this, would it typically be reduced to a vote?

12:27:52:100

12:28:02:200

12:28:02:300

12:28:02:400

A I don't know. You sit around and you argue and then you arrive at some kind of a final

12:28:07:100 draft, and people put their own two cents worth
12:28:11:200 in, we should say this, and we should say that,
12:28:13:300 and that is what comes up. But I don't think
12:28:15:400 there was a vote. There was generally an
12:28:18:500 agreement at the end of the thing that this is the
12:28:22:600 wording. We didn't raise our hand to say yes, I
12:28:26:700 vote yes or I vote no.

12:28:26:800 Q And you had mentioned that perhaps there
12:28:28:900 was some discussion as to whether or not it should
12:28:31:000 be a caution as opposed to a warning, and whether
12:28:33:100 the word "cancer" should or should not appear. Do
12:28:35:200 you recall discussions about that?

12:28:41:300 A I don't specifically recall discussions
12:28:43:400 on that, but I'm sure there probably were
12:28:45:500 discussions.

12:28:48:600 Q Is it your understanding that the
12:28:51:700 industry, including the FMSI did not want the
12:28:53:800 words "danger" and "cancer" to be included in this
12:29:01:900 label?

12:29:02:000 A The FMSI really had nothing to do with
12:29:04:100 it. The FMS -- the wording was selected by the
12:29:06:200 people who served on the committee. I was the
12:29:08:300 flunky who took the notes.

12:29:15:400 Q Sir, I am not being critical of you in

29:18:10 0 anyway. My question related to whether or not the
29:22:20 0 FMSI and its members had a problem with the words
29:30:30 0 "danger" and "cancer" in the label, do you recall
29:31:40 0 that?

A They may have. I didn't.

Q I'm not, again, Mr. Drislane, I don't
29:33:60 0 want you to take this personal, and I am not being
29:35:70 0 critical of you. Let me show you what you said on
29:39:80 0 page 304 of that deposition you gave back in 1999.
29:43:90 0 Beginning at line 16. Question: "Isn't it true
29:48:00 0 that at this time OSHA had initially wanted the
29:51:10 0 words "danger" and "cancer" to be included in the
29:54:20 0 label, and industry including the FMSI did not
30:01:30 0 want those two, and this says "boards," but I
30:05:40 0 think it is "words in the label," and your answer
30:09:50 0 is, "That is my understanding." Do you recall
30:11:60 0 giving that testimony?
30:13:70 0

A If that's what they took down when I said
30:16:80 0 it, that's probably what I said. I blessed well
30:18:90 0 can't remember what I did that day.
30:22:00 0

Q Sir, this isn't a memory test. I am just
30:24:10 0 trying to establish what you recall happening and
30:26:20 0 what you don't. Now do you have an understanding
30:32:30 0 as to why industry didn't want the word "danger"
30:35:40 0

12:30:39:100 or "cancer" on this label?

12:30:41:200 A I don't really know the answer to your
12:30:45:300 question, but I would assume they didn't like the
12:30:48:400 word "cancer."

12:30:48:500 Q And why is that?

12:30:50:600 A Well I don't like the word "cancer"
12:30:52:700 either. In other words, it is a serious disease.

12:31:00:800 Q Sure. But don't you think people who
12:31:07:900 work with these products deserve to know that they
12:31:09:100 might possibly contract cancer as a result of that
12:31:11:100 work?

12:31:11:200 A Let's take the dates that all this is
12:31:13:300 going on. This is in the early '70s. By the end
12:31:15:400 of the '70s I would say yes, it was fairly well
12:31:21:500 proven that this was a real problem. But at the
12:31:31:600 beginning of the '70s, I had never heard asbestos
12:31:31:700 and cancer in the same -- in the same paragraph.
12:31:35:800 This is all new to me.

12:31:39:900 Q Sir, my question was: Don't you think
12:31:42:000 people who work with these products deserve
12:31:45:100 to know that at least there was a possible
12:31:48:200 association between exposure to asbestos and
12:31:52:300 cancer, didn't they deserve that?

12:31:52:400 A Who are we talking about, my customers or

12:32:01:100 the consumer down the line, the person who gets a
12:32:05:200 brake job done at the car dealer? This stuff was
12:32:09:300 being developed for the manufacturers of brake
12:32:13:400 linings in their shops. The big thing at the
12:32:16:500 beginning was at your presses where you press the
12:32:18:600 material together or where you extruded it or
12:32:22:700 where you calendared it, and all that stuff, it
12:32:24:800 was made for those people. We were not thinking
12:32:26:900 directly in terms of the ultimate consumer at that
12:32:30:100 particular time.

12:32:30:110 Q Sir, didn't the FMSI publish up to 40,000
12:32:35:120 copies of these a year?

12:32:37:130 A In one year we did.

12:32:39:140 Q And there aren't 40,000 manufacturers of
12:32:41:150 asbestos brakes?

12:32:41:160 A These were for all their members. This
12:32:43:170 was for all their customers, for the rebuilders
12:32:45:180 and the brake shops, and all that, yes. But they
12:32:47:190 were not meant for the person, you know, standing
12:32:49:200 around in a brake shop. They were meant for
12:33:01:210 people who were working with asbestos products.

12:33:03:220 Q Well regardless of if we are talking
12:33:05:230 about a company or a distributor or the guy who is
12:33:07:240 standing around while a brake job is being

performed, wouldn't you agree with me that he or she deserve to know that working with brakes might cause cancer?

A Yes. That's the answer you want, right? Yes.

Q Because there is nothing more valuable than human life; correct?

A I believe so.

Q What's more valuable than human life?

A I'm not going to go into this. I mean, I -- what's your point?

Q My point is is that the people who work with these brakes should have been warned of the hazards, and that didn't happen; did it?

A Warning them of the hazards and were telling them not to do, but we didn't put the word "cancer" in the thing.

Q Cancer is the kind of thing that gets your attention; doesn't it?

A Yes, it does.

Q You know that from personal experience?

A Yes, I do.

Q Scary?

A But not from asbestos.

Q No, sir. Getting back to the question as to why the word "cancer" or "danger" didn't appear in here, isn't it true that industry thought people would stop buying these asbestos brakes?

A That may very well be. I think some members felt that way.

Q Do you remember who they were?

A No, I do not.

Q Now getting back to that 1977 recommended procedure that doesn't mention cancer, do you think that reflected the full knowledge of the FMSI in 1977?

A I believe so.

Q Okay. Now let's look at what Mr. Weaver said in that address he gave to the membership back in 1973 in the summertime out at Vail. We talked about that earlier. You have that in front of you. That's Plaintiff's Exhibit 3. Didn't Mr. Weaver say that all major commercial types of asbestos can cause cancer?

A I believe he said that, but I don't think he said it at what level and all that. In other words, I'm saying you can cause cancer, but if you had a certain level, it might be 0.1 fibers per

cc, does that cause cancer? I don't know. I don't know whether Mr. Weaver got into that part. What's the concentration with one fiber in a thousand cc's cause cancer? I don't know.

Q Let's look at what Mr. Weaver said. Didn't he say that large volume replacement users present major potential hazards but even small jobs, small job shops can needlessly expose people to high fiber concentrations if operations are performed without controls?

A Uh-huh.

Q He goes on to say that these may be intermittent and of shorter duration, and that does not preclude the possibility for occurrence of adverse health affects in hyper susceptible individuals. Do you recall that?

A No, I don't recall that. I hear you reading it off, and I believe that's what he said.

Q And you understand that to mean that people who don't work with asbestos all day, that might work with it from time to time, can be at risk for the development of asbestos-related diseases?

A With the heavy concentrations, yes.

Q And do you know what the safe level of asbestos exposure is?

A Well, no, and nobody did at that time. The OSHA worked on this and they would first of all came with the two fibers, they came two fibers per cc. The time waited something all day long, and a five fibers per cc, and then they dropped it down to a lower concentration. But they were gradually over the years moved it to lower concentrations when they finally came down to none. But during that interim period, I didn't know that small concentrations would give cancer, no, I didn't know that.

Q You had subscribed to the Federal Register for many years?

A Yes.

Q And when information pertaining to asbestos would be published in the Federal Register, you would copy that and forward it to your members?

A Well, I know I forwarded it to the members of the Asbestos Study Committee, and I may have distributed to the delegates and alternates. But you got to remember, the delegates and

12:38:05:100 alternates were primarily salespeople. I don't
12:38:07:200 know whether I sent it to them. It would depend
12:38:11:300 on what it said down below. I say copies to
12:38:13:400 Asbestos Study Committee, delegates and
12:38:16:500 alternates, if that's the case, that's where I
12:38:18:600 sent them.

12:38:20:700 Q Yes, sir. And those OSHA regulations
12:38:22:800 that you described, the various levels of
12:38:26:900 allowable exposure --

12:38:28:100 A Yes.

12:38:28:110 Q -- they were called permissible exposure
12:38:30:120 limits or PELs?

12:38:30:130 A Yes.

12:38:30:140 Q Do you recall OSHA saying quite clearly
12:38:31:150 in those regulations that significant risk exists
12:38:31:160 below that level?

12:38:41:170 A I don't recall this. I -- but I'm saying
12:38:41:180 I am sure if you read it someplace and it is in my
12:38:51:190 papers, that that was so, but I don't recall it
12:39:01:200 right here.

12:39:02:110 Q Now with respect to Chrysotile asbestos
12:39:02:200 in 1973, Mr. Weaver indicated that not only could
12:39:12:300 all commercial types of asbestos, including
12:39:12:400 Chrysotile cause cancer, but that it could cause

39:18:10 0 mesothelioma; correct?

A I believe that's what he said.

Q In fact, his exact words were, "The most important item here is the incrimination of all major types of asbestos as causal agents for carcinoma, particularly mesothelioma," do you see that, sir?

A I saw it I'm sure. I'm sure you are not getting it from the wind. There it is.

Q Yes, sir. And isn't it true that Chrysotile asbestos was the type of asbestos used in most brake lining and clutch facings?

A From my background, that's what I believe, yes.

Q Okay. And in those friction products that use Chrysotile, wasn't in some instances almost half, if not more of that product, Chrysotile asbestos?

A You got to be more specific about what you are saying. Is it more than half by volume or more than half by weight, or what? In other words --

Q Well, you tell me. Can you give me information about how much asbestos these brakes

12:40:31:100 contained?

12:40:31:200 A I'm not sure. But by volume it is a lot
12:40:35:300 different than by weight. If you are going and
12:40:39:400 mixing up, putting your stuff in there, you add
12:40:41:500 stuff by weight. But if you are saying how much
12:40:45:600 is in there by volume, it could be you could have
12:40:52:700 a piece of product, forget friction materials,
12:40:54:800 where the product was 20 percent by weight but it
12:41:01:900 could be 60 percent by volume, or something to
12:41:05:1000 that affect. So read me your question again.

12:41:11:100 Q I guess I was just trying to establish,
12:41:13:200 Mr. Drislane, that the asbestos brakes in that
12:41:15:300 time frame contained Chrysotile?

12:41:16:400 A Yes.

12:41:16:500 Q And there was a lot of Chrysotile in
12:41:20:600 those brakes, it wasn't just one percent?

12:41:22:700 A No. No. Correct.

12:41:24:800 Q Okay. Some of them were 40 to 50 percent
12:41:28:900 Chrysotile asbestos?

12:41:30:000 A By volume.

12:41:32:100 Q By volume?

12:41:32:200 A Okay.

12:41:32:300 Q And you know that asbestos fibers are
12:41:32:400 microscopic?

41:41:10 0 A Yeah. They are quite visible. If you
12:41:43:20 0 had asbestos fibers, they look like asbestos
12:41:46:30 0 fibers. You might not see an individual fiber or
12:41:50:40 0 something, but you see the fibers like snow.

12:42:00:50 0 Q Back in 1973 when Mr. Weaver addressed
12:42:01:60 0 the membership, did he tell them that there had
12:42:05:70 0 been a considerable disregard of a number of
12:42:09:80 0 things involving worker safety, including
12:42:13:90 0 labeling, monitoring, employee education, personal
12:42:16:00 0 protection, waste disposals, and use of warning
12:42:18:10 0 signs by some members of the asbestos products
12:42:21:20 0 industry; did he raise that as an issue?

12:42:24:30 0 A I don't recall. But if you are reading
12:42:27:40 0 it from someplace, he probably did. Where is
12:42:31:50 0 this? Can you point it out to me?

12:42:34:60 0 Q Yes, sir. It would be in the red text.

12:42:37:70 0 A The red text. (Reading.) Labeling and
12:42:41:80 0 employee education and waste disposal use of --
12:42:44:90 0 (Reading.) That's what he said.

12:42:48:00 0 Q Didn't he say that not only was that
12:42:51:10 0 being done by people who made asbestos products in
12:42:55:20 0 general, but did that apply to the friction
12:42:58:30 0 material industry?

42:52:40 0 A I don't know. That's what he said. I

12:43:00:100 have not memorized this whole text here. If
12:43:03:200 that's what he said, that's what he said.

12:43:05:300 Q And do you agree with that?

12:43:07:400 A I don't know. I never held myself out as
12:43:11:500 being an expert in that area. I don't know what
12:43:13:600 other friction product manufacturers did. I don't
12:43:16:700 know what other -- other manufacturers he is
12:43:18:800 talking -- first of all, it is talking about
12:43:20:900 asbestos products manufacturing in general, and
12:43:21:000 then he says, "I believe this applies to friction
12:43:21:100 material to some extent." I don't know what other
12:43:31:200 friction materials manufacturers did. I don't
12:43:31:300 believe -- I believe the Bendix was clean in that
12:43:31:400 area. That's the only one I am familiar with.
12:43:31:500 The only reason I am familiar with Bendix is
12:43:31:600 because I worked for them.

12:43:31:700 Q When you say you believe they were clean,
12:43:41:800 what do you mean?

12:43:41:900 A I think they probably had the warning
12:43:42:000 signs, and they probably did the labeling and the
12:43:52:100 monitoring and the personal protection. They
12:44:02:200 spent lots of money in this area. That's what I
12:44:02:300 mean.

12:44:12:400 Q You -- you worked for Bendix; correct?

12:44:13:100

A That is correct.

12:44:15:200

Q Do you get a pension from Bendix?

12:44:18:300

A Yes.

12:44:18:400

Q Do you own any stock in Bendix, or Allied

12:44:20:500

Signal or Honeywell?

12:44:24:600

A No. Do you want to know what my pension is?

12:44:28:700

12:44:28:800

Q No, sir.

12:44:30:900

A Not much.

12:44:31:000

Q As Executive Director of the FMSI, you

12:44:31:100

polled your members at one point to see whether

12:44:31:200

they were complying with OSHA, and to see whether

12:44:41:300

they were warning; didn't you?

12:44:41:400

A We polled the members as to whether they

12:44:41:500

interpreted certain things to mean, you know, did

12:44:51:600

this mean you have to put a notice with every

12:44:51:700

package you send out, or we polled them on what,

12:44:51:800

how they interpreted some of the regulations. I

12:45:01:900

believe is that what you are referring to?

12:45:02:000

Q No. I am asking whether you ever

12:45:02:100

conducted a survey to see whether people were

12:45:12:200

labeling in accordance with OSHA?

12:45:12:300

A That's the one where -- I believe that's

12:45:12:400

the one where we asked the members whether they

1 2 : 4 5 : 1 6 : 1 0 0 were labeling their products. Can you get me to
1 2 : 4 5 : 2 0 : 2 0 0 the piece of paper that says it, and I will give
1 2 : 4 5 : 2 4 : 3 0 0 you the answer, all right?

Q It is right there, sir.

A So, obviously, yes, if that's what you
1 2 : 4 5 : 2 8 : 5 0 0 are talking about, this was the copy of the, you
1 2 : 4 5 : 3 0 : 6 0 0 know, some people did not interpret some of the
1 2 : 4 5 : 3 3 : 7 0 0 requirements of the OSHA regulations to mean that
1 2 : 4 5 : 3 7 : 8 0 0 they are going to label shipments to replacement
1 2 : 4 5 : 4 1 : 9 0 0 manufacturers to the after market. Some of them
1 2 : 4 5 : 4 3 : 1 0 0 didn't feel. We are asking them how do they
1 2 : 4 5 : 4 5 : 1 1 0 0 interpret the rules. The rules if you read them,
1 2 : 4 5 : 4 8 : 1 2 0 0 you got to interpret them. Rules are not hard and
1 2 : 4 5 : 5 1 : 1 3 0 0 fast. They -- you have to interpret them. So,
1 2 : 4 6 : 0 1 : 1 4 0 0 yes, we did ask them.

Q Just for the record, this is FMSI 02801.
1 2 : 4 6 : 0 7 : 1 6 0 0 And take a look at this with me, Mr. Drislane.
1 2 : 4 6 : 1 1 : 1 7 0 0 Does this indicate to you that you sent out 25
1 2 : 4 6 : 1 5 : 1 8 0 0 requests November of '72, and that about a month
1 2 : 4 6 : 1 8 : 1 9 0 0 later you had only heard from 11 of your members,
1 2 : 4 6 : 2 1 : 2 0 0 and of the 11 that you heard from only one of them
1 2 : 4 6 : 2 4 : 2 1 0 0 was labeling replacement shipments?
1 2 : 4 6 : 2 7 : 2 2 0 0

A At that point, yes.

Q And you knew as of 12/6 of '72 that ten

46:43:10 0 out of the 11 people were selling or supplying
46:45:20 0 asbestos brakes with no label on them?

A What do you mean?

Q In other words, if only one was warning,
46:52:50 0 then the other ten weren't, and you realized that?

A Yeah. Yeah.

Q And didn't that -- wasn't that
47:03:80 0 problematic for you to know?

A No. Because people were trying to
47:05:90 0 interpret the thing, and as far as the label
47:07:10 0 replacement and all that stuff, they were given
47:09:10 0 the wording on the thing. If they did, if they,
47:11:30 0 you know, we will not divulge the results by the
47:13:40 0 individual party because we knew people like you
47:15:50 0 would be around later on, you know, to go and say
47:17:60 0 did they know this or did they not. So the fact
47:19:70 0 that we got 11 out of the 20 sent out, I think
47:21:80 0 that was a pretty good response rate.

Q In fact, here on 2800, which is your
47:22:00 0 Bulletin 462 of December 6th, 1972, you go on to
47:24:10 0 say that 25 questionnaires were sent out, 11
47:26:20 0 replies were received, replies were received from
47:28:30 0 a reasonable cross section of the membership, as
47:30:40 0 the replies were confidential, the forms submitted

by the members have been destroyed, do you see that?

A Yeah.

Q That's what you are just talking about; right?

A Yes, because we told them that we were not going to divulge, to get response, people wouldn't respond to this thing if they have something in the file saying what they said in response.

Q In other words, your members who were not warning didn't want a record of that and they wanted these replies to be confidential and to be destroyed so that down the road in a situation like this I couldn't find out who was warning and who wasn't, is that an accurate summary of what you just told me?

A Yes. But that was the way we were going to get responses. If we didn't do that, we wouldn't get any responses.

Q Do you agree with me that the FMSI never distributed any information it had about the hazards of asbestos to members of the general public?

49:09:10 A I don't believe we circulated stuff to
12:49:11:20 the general public. Our stuff was sent to the
12:49:13:30 manufacturers and the members, and it was up to
12:49:16:40 them to go and distribute it to their customers.

12:49:26:50 Q And, obviously, some of them weren't
12:49:31:60 doing that?

12:49:31:70 A Perhaps.

12:49:33:80 Q Do you believe that anyone working on
12:49:35:90 brakes, asbestos brakes needs protection?

12:49:37:00 MR. HARKINS: At what time are you
12:49:39:10 asking about his belief?

12:49:41:20 THE WITNESS: I think they probably
12:49:43:30 should use a mask or something, but I --
12:49:45:40 you are talking about I believe?

12:49:46:50 BY MR. DeLUCA:

12:49:46:60 Q Yeah.

12:49:48:70 A If I were doing a brake job, I wouldn't
12:49:50:80 be bothered with all the junk myself, but I can
12:49:51:90 see where other people put a respirator on or and
12:50:00:00 use a vacuum around the thing. You walk into a
12:50:02:10 brake shop today and maybe they -- I don't know
12:50:04:20 what they do because half the stuff has no longer
12:50:12:30 got asbestos in it.

50:12:40 Q But half of it does?

50:15:10.0 A Today?

12:50:16:20.0 Q Yes, sir.

12:50:18:30.0 A I doubt it.

12:50:18:40.0 Q Are you aware that they still continue to
12:50:22:50.0 sell asbestos containing brakes in the United
12:50:24:60.0 States in 2002?

12:50:26:70.0 A I don't know that. I am not aware of it,
12:50:28:80.0 no.

12:50:28:90.0 Q Have you ever worked with brakes?

12:50:31:00.0 A Yes, when I worked at Bendix.

12:50:31:10.0 Q You were working on the manufacture of
12:50:31:20.0 them. Have you ever changed the brakes on your
12:50:41:30.0 car?

12:50:41:40.0 A Not by myself, no.

12:50:41:50.0 Q You had mentioned Dr. Selikoff earlier.
12:50:41:60.0 You had had the opportunity to meet him on a few
12:50:51:70.0 occasions; didn't you?

12:50:51:80.0 A Yes.

12:50:51:90.0 Q And you even went over and visited him at
12:50:52:00.0 the Mt. Sinai School of Medicine in New York; did
12:51:02:10.0 you not?

12:51:02:20.0 A Yes.

12:51:02:30.0 Q And Dr. Selikoff came to you and was
51:02:40.0 seeking some information from you, when I say

51:11:10 0 "you," I mean the Institute, about what the
12:51:15:20 0 Institute knew about the hazards of asbestos
12:51:16:30 0 brakes; correct?

12:51:16:40 0 A I can't say that's correct. I don't know
12:51:20:50 0 what Dr. Selikoff came back to me. Dr. Selikoff
12:51:26:60 0 had a -- somebody working with them, Mt. Sinai,
12:51:28:70 0 forget the guy's name. And they took -- I
12:51:31:80 0 described to them how people serviced brakes and
12:51:35:90 0 all that, and described the difference between the
12:51:37:10 0 certain fixed anchor brake and adjustable anchor
12:51:41:10 0 brake and all that stuff, and he wrote the thing
12:51:41:20 0 up completely screwy, and I wrote him back and
12:51:41:30 0 told him that you misinterpreted what I said. But
12:51:51:40 0 never about what's the danger of brakes or
12:51:51:50 0 asbestos and all that stuff. It was about how you
12:52:01:60 0 go and service certain types of brakes and all
12:52:01:70 0 that stuff.

12:52:01:80 0 Q Sir, you are describing an interaction
12:52:01:90 0 you had with Dr. William Nicholson of Mt. Sinai?

12:52:02:00 0 A That's the gentleman's name.

12:52:02:10 0 Q Okay. My question to you is -- relates
12:52:12:20 0 to Dr. Selikoff. When Dr. Selikoff came to you,
12:52:12:30 0 did you share with Dr. Selikoff any of the
52:12:40 0 comments that Mr. Weaver made?

52:18:100

A Now you will have to stop here.

12:52:20:200

Doctor -- I don't believe Dr. Selikoff ever came over to my office.

12:52:22:300

12:52:24:400

Q Did he contact you on the phone or in writing?

12:52:26:500

12:52:26:600

A Yes, he may have. He may have phoned me.

12:52:30:700

Q You went to his office?

12:52:30:800

A I went to his office, yes.

12:52:31:900

Q Either when you were there at his office

12:52:31:000

or when he contacted you by phone or by letter,

12:52:31:100

did you ever share with Dr. Selikoff any of the

12:52:41:200

information the Institute had on the hazards of

12:52:41:300

asbestos as reflected in Mr. Weaver's address,

12:52:51:400

which is Exhibit 3?

12:52:51:500

A The answer is no. Now stop. We went to

12:53:01:600

Dr. Selikoff's office because he was studying a

12:53:01:700

cohort brake repair people, I believe that work

12:53:01:800

for Sears someplace in Rockland County or

12:53:01:900

something like that. They were running a study.

12:53:12:000

Apparently got some money from NIOSH or somebody

12:53:12:100

else to study this. And we went over there, as I

12:53:12:200

recall, to find out what the results were, and we

12:53:22:300

never did get the results. My understanding is

53:22:400

the results were was they didn't have the results

53:28:10 0 they wanted, so they never published it. But they
12:53:31:20 0 never asked for my input on the thing. I don't
12:53:35:30 0 think Bill or Selikoff asked for anything on that.

Q I want to show you something you said
12:53:39:40 0 back in 1999 about these warnings. I have it up
12:53:43:50 0 on the screen for you. And you said, "We were
12:53:46:60 0 trying to educate people about the hazards of
12:53:50:70 0 asbestos in a book that they might look at. I
12:53:54:80 0 thought we were being good people." Do you
12:54:01:90 0 remember saying that?
12:54:03:00 0

A I most likely did. I don't dispute that.
12:54:05:10 0

Q Who were the people you were trying to
12:54:09:20 0 educate?
12:54:11:30 0

A I would say the people who worked on
12:54:13:40 0 brakes in the brake shops. In other words, the
12:54:15:50 0 guy at you go to the automotive brake shop and he
12:54:18:60 0 might be grinding some brake linings or something
12:54:21:70 0 like that, we are trying to educate him that some
12:54:24:80 0 care is called for in dealing with these brake
12:54:27:90 0 linings.
12:54:30:00 0

Q So, sir, wouldn't you agree that good
12:54:32:10 0 people would have mentioned cancer?
12:54:34:20 0

A You are going to keep on harping on this
12:54:36:30 0 thing here on the cancer. Cancer was obviously
54:42:40 0

54:45:10 0 the reason for the thing, but I don't think we
12:54:46:20 0 want to go and say "this causes cancer." You
12:54:50:30 0 can't even do that today on -- well you can do it,
12:54:54:40 0 I guess, on cigarettes. I wasn't going to go and
12:55:01:50 0 shout the word "cancer." I wasn't going to say
12:55:05:60 0 "buyer in place" or something like that.

12:55:07:70 0 Q Why is that? Would it have been bad for
12:55:09:80 0 business for the industry?

12:55:11:90 0 A I don't know.

12:55:22:10 0 Q It is a reasonable conclusion to draw;
12:55:24:10 0 isn't it?

12:55:30:12 0 A It's the conclusion that you obviously
12:55:31:30 0 have drawn.

12:55:33:14 0 Q Let me show you the book for 2002. Was
12:55:41:50 0 Exhibit 13 in Mr. Laycock's June 2002 deposition.

12:55:43:16 0 A Okay.

12:55:43:17 0 Q Read that for me.

12:55:50:18 0 A "Danger, contains asbestos fibers, avoid
12:55:52:19 0 creating dust. Cancer and lung disease hazards."
12:55:54:20 0 That was the evolution of time. In other words,
12:56:02:10 0 the first warning was we didn't have all this
12:56:02:20 0 information. This is the warning nowadays. This
12:56:02:30 0 is also probably the warning handed down by OSHA.

56:12:40 0 Q No, sir. You had that information in

1973. You just chose not to publish it?

A That's what you say.

Q Do you agree with that?

A Danger, contains asbestos fibers, yes, avoid creating dust, cancer and lung disease hazards, yes.

Q You knew all that in 1973?

A I did not know that.

Q The Institute knew all that?

A Institute members may have known it. People like JM and Raybestos, and others, who were one of the leaders of this thing, they knew it.

Q Sir, everybody that attended that conference in Vail knew it, and that included you?

MR. HARKINS: He didn't finish his prior question or prior answer. You interrupted him.

MR. DeLUCA: He can tell me that.

MR. HARKINS: Well I will tell you that.

MR. DeLUCA: Can you read his mind, counselor?

MR. HARKINS: I could hear him and I could tell he was still speaking when you

57:09:10

began a question.

12:57:09:20

BY MR. DeLUCA:

12:57:11:30

Q By all means, please finish your answer,

12:57:11:40

Mr. Drislane.

12:57:13:50

A Look, I am 79 years old. I can't

12:57:16:60

remember where I parked the car. I can't remember

12:57:18:70

the last statement I made. Okay? You are

12:57:20:80

younger. You can remember these things. I can't.

12:58:05:90

What did I say?

12:58:07:10

Q Well have her read it back for you.

12:58:11:10

A All right.

12:58:13:20

(The Reporter read back the

12:58:13:30

requested portion.)

12:58:13:40

BY MR. DeLUCA:

12:58:13:50

Q Please continue with the answer you were

12:58:16:60

giving, sir.

12:58:16:70

A You are going to have to get a younger

12:58:18:80

person to come here and handle this. I can't.

12:58:21:90

Why don't you ask some kind of a question I can

12:58:32:00

give you a direct answer on?

12:58:32:10

Q I believe I --

12:58:32:20

A What do I know that I -- at that time. I

12:58:32:30

don't remember what I knew at that time. I don't

58:32:40

think we believed that it was a -- that a sterner

58:43:10 warning was called for than the one that was given
12:58:45:20 at the beginning, and that was based on the
12:58:48:30 experts that I had, the people that worked on the
12:58:50:40 committee. I didn't know anything in this
12:58:52:50 particular stuff. I was being schooled in this,
12:59:00:60 you might say. What happened here these here are
12:59:03:70 the gradual, the gradual development of the
12:59:05:80 problems with cancer and with asbestos. I didn't
12:59:09:90 know this stuff at the beginning. I didn't even
12:59:11:00 know asbestos was a problem. I didn't know
12:59:13:10 asbestos was a concern when I started off with
12:59:15:20 FMSI.

12:59:16:30 Q You had to know it was a problem when
12:59:18:40 they formed the Asbestos Study Committee in 1971?

12:59:21:50 A That's correct.

12:59:23:60 Q So from that point forward you recognize
12:59:25:70 that you knew asbestos was a hazard?

12:59:31:80 A Asbestos caused cancer, but, yes. You
12:59:33:90 know what levels and all that stuff, I didn't know
12:59:35:00 that.

12:59:37:10 Q Mr. Weaver said in his address that to
12:59:39:20 him labeling all containers or packages of
12:59:41:30 asbestos containing friction material is the very
59:42:40 least the industry can do to fulfill moral

59:48:10 obligation to its customers, their employees and
12:59:52:20 the public at the same time conform with minimum
12:59:54:30 requirements of the Occupational Safety and Health
13:00:01:40 Act. Did you agree with Mr. Weaver that labeling
13:00:05:50 was the very least industry could do to fulfill
13:00:07:60 its moral obligation?

13:00:09:70 A I never sat there in judgment of Ike
13:00:11:80 Weaver. Ike Weaver presented his case and he was
13:00:15:90 more skilled in it than I was. And I just acted
13:00:16:00 as the secretary reporting the information and
13:00:20:10 putting it together. What I thought in terms of
13:00:24:20 whether it was actually caused cancer and all at
13:00:26:30 the beginning, I don't know what. I relied on the
13:00:28:40 people in the committee, but he was one voice.
13:00:31:50 The other people on the committees did not
13:00:33:60 necessarily agree with him.

13:00:35:70 Q And is that why cancer wasn't mentioned
13:00:37:80 in there in 1977?

13:00:41:90 A I can't answer why, why something
13:00:43:00 happened.

13:00:45:10 Q You attended the Asbestos Study Committee
13:00:47:20 meetings?

13:00:49:30 A Yes, I did. I acted as this young lady
:00:42:40 here is acting, I was the secretary and I took

00:52:10

down notes.

13:00:54:20

Q Okay. And while she is here as a neutral participant, you were employed by FMSI?

13:01:00:30

13:01:01:40

A Correct.

13:01:03:50

13:01:05:60

Q And did you ever have a time in your employment whereas you are sitting there you are thinking to yourself, you know, we are just not doing the right thing, did you ever feel that way?

13:01:09:70

13:01:13:80

13:01:15:90

A I never felt that way. I felt we were helping get out the information on the asbestos problem.

13:01:21:00

13:01:24:10

13:01:24:20

Q You were being good people?

13:01:26:30

13:01:28:40

A That's what I thought. I didn't have hindsight.

13:01:30:50

MR. DeLUCA: Let's take a break.

13:01:31:60

13:13:41:70

13:13:41:80

MR. PIAZZA: The time is now one o'clock, we will take a pause in the testimony of Mr. Drislane.

13:13:50:90

(A short recess was taken.)

13:13:52:00

13:14:02:10

13:14:02:20

MR. PIAZZA: Time is now 1:12, we will resume the testimony of Mr. Drislane.

13:14:02:30

BY MR. DeLUCA:

14:02:40

Q Mr. Drislane, good afternoon, again. I

14:16:10 0 want to talk to you a little bit more about
13:14:20:20 0 warnings on asbestos containing friction
13:14:22:30 0 materials. Who do you believe had more
13:14:26:40 0 information about the hazards of asbestos in the
13:14:28:50 0 early '70s, the FMSI and its members, or consumers
13:14:37:60 0 who would do their own brake work?

13:14:41:70 0 A If you got two zeros there. I would
13:14:45:80 0 think people like Johns-Manville knew more about
13:14:46:90 0 it than anybody else because they were the biggest
13:14:50:10 0 asbestos. They were members of the Institute, so
13:14:52:10 0 I suppose by that connection and the Institute
13:15:01:20 0 knew more about it than the people out in the
13:15:05:30 0 field.

13:15:07:40 0 Q And you used Johns-Manville as an
13:15:09:50 0 example, but your answer would be the same for
13:15:13:60 0 other companies like Raybestos; correct?

13:15:15:70 0 A Raybestos was next in knowledge to
13:15:16:80 0 Johns-Manville, I would say.

13:15:18:90 0 Q How about Bendix, they would know also?

13:15:20:00 0 A They would know, but they did not have --
13:15:22:10 0 they didn't have a big staff like these other
13:15:22:20 0 companies. They didn't have, to my knowledge, at
13:15:30:30 0 the local level environmental or workplace stuff
15:32:40 0 like that. Whereas both Raybestos and JM did.

15:39:10.0

Q You are unable to tell this jury when

13:15:43:20.0

Bendix first knew of the hazards of asbestos; are you?

13:15:46:30.0

13:15:48:40.0

A No, I'm not.

13:15:48:50.0

Q Nor would you be able to even tell them,

13:15:52:60.0

for instance, when Ernie Martin knew of the hazards of asbestos?

13:16:00:70.0

13:16:05:80.1

MR. MENDRZYCKI: Object to the form.

13:16:07:90.0

THE WITNESS: No. That's true.

13:16:07:100.0

BY MR. DeLUCA:

13:16:07:110.0

Q His name was Ernie; right?

13:16:09:120.0

A That's correct.

13:16:11:130.0

Q With respect to warnings you have said

13:16:13:140.0

before that if you see a big warning sign on

13:16:16:150.0

something, you might not buy it, just as a general matter?

13:16:21:160.0

13:16:21:170.0

A I think some of my members felt that way.

13:16:26:180.0

Q And you can understand the thinking

13:16:28:190.0

behind that though; correct?

13:16:32:200.0

A Yeah, particularly at the early stages

13:16:37:210.0

when people didn't realize there was a problem.

13:16:42:220.0

Q And do you think that people who had that

13:16:52:230.0

belief that warnings could hurt sales were

:17:02:240.0

concerned more about profits than safety?

17:03:10.0 A That's a tough one because we didn't
13:17:07:20.0 really realize, or I don't think the members
13:17:09:30.0 realized there was a problem, so why are you going
13:17:11:40.0 to go around saying dangerous asbestos here and
13:17:15:50.0 all that when nobody knew at that time that it
13:17:16:60.0 was? I say when they didn't accept the fact,
13:17:18:70.0 maybe one or two of them did know. I don't know.

13:17:20:80.0 Q At what time are you talking, sir?

13:17:22:90.0 A I am talking about the early '70s. I
13:17:28:00.0 started with FMSI, I believe, in 1970. '71 is
13:17:31:10.0 when the first Asbestos Study Committee hit. I
13:17:33:20.0 hit this damn thing right at the very beginning,
13:17:35:30.0 but I didn't know anything about it. I never
13:17:39:40.0 considered asbestos a hazard. I worked with it
13:17:43:50.0 when I was at Bendix.

13:17:45:60.0 Q Bendix never told you asbestos was
13:17:48:70.0 dangerous?

13:17:48:80.0 A I don't think they knew.

13:17:51:90.0 Q All right. Assuming that they did know?

13:18:02:00.0 A I won't make that assumption because I
13:18:02:10.0 just don't think that they did.

13:18:02:20.0 MR. MENDRZYCKI: Objection.

13:18:02:30.0 Objection.

18:07:10 0 BY MR. DeLUCA:

13:18:07:20 0 Q I am asking you just for the purposes of
13:18:13:30 0 my question to assume that they did know, wouldn't
13:18:20:40 0 you have wanted to know that?

13:18:22:50 0 A Not particularly. I -- we have more
13:18:24:60 0 things going on than just asbestos and whatnot.
13:18:28:70 0 You get hit by a car. I thought we were -- I
13:18:31:80 0 thought we at Bendix were doing a good job
13:18:33:90 0 developing good quality brake linings to stop cars
13:18:35:00 0 safely and all that. But the fact that they had
13:18:37:10 0 asbestos in them, I didn't think had anything to
13:18:41:20 0 do.

13:18:41:30 0 Q I am just saying --

13:18:43:40 0 A And I don't think that they did.

13:18:45:50 0 Q And you haven't reviewed any of their
13:19:21:60 0 documents on that issue?

13:19:21:70 0 A Unless they were brought up at one of the
13:19:21:80 0 depositions.

13:19:21:90 0 Q Sir, I want to show you a letter dated
13:19:32:00 0 September 12th, 1966.

13:19:32:10 0 MR. MENDRZYCKI: I am just going to
13:19:32:20 0 object to this letter being shown on the
13:19:32:30 0 screen. There has been no foundation
13:19:32:40 0 established. Object to the authenticity

19:39:10 of this letter at all.

13:19:41:20 MR. DeLUCA: The objection is noted.

13:19:41:30 BY MR. DeLUCA:

13:19:43:40 Q I am going to show you a letter dated
13:19:45:50 September 12th, 1966 from E. A. Martin, you know
13:19:50:60 him to be Ernie Martin from Bendix, to Mr. Noel
13:19:54:70 Hendry of Canadian Johns-Manville, do you know
13:20:00:80 Mr. Hendry or did you know of him?

13:20:01:90 A No. I heard the name.

13:20:05:00 Q All right. And I want to call your
13:20:09:10 attention to this last paragraph here, and recall,
13:20:11:20 please, this is from September of '66. Can you
13:20:15:30 read that, sir?

13:20:16:40 A Yes.

13:20:18:50 Q It says, "My answer to the problem is if
13:20:21:60 you have enjoyed a good life while working with
13:20:24:70 asbestos products, why not die from it." Now --

13:20:28:80 A That's very funny.

13:20:31:90 Q It is, isn't it? It is not funny to the
13:20:35:00 wife of my client. Mrs. Cutright lost her husband
13:20:38:10 when he was 32. She doesn't find this document
13:20:42:20 funny. Why do you?

13:20:45:30 A It is a stupid thing to say.

20:46:40 Q On the part of Ernie Martin?

13:20:48:10 0 A Yeah.

13:20:50:20 0 Q Okay. I can appreciate that.

13:20:52:30 0 A You enjoyed a good life to work with
13:21:00:40 0 asbestos, but why not die for. I mean, come on.

13:21:03:50 0 Q That's a callous attitude towards human
13:21:07:60 0 life; isn't it?

13:21:09:70 0 A If that was seriously his attitude, yes.

13:21:11:80 0 Q Let's put that aside for a second and let
13:21:15:90 0 me revisit the question as to when Bendix may or
13:21:18:00 0 may not have known that there was something wrong
13:21:20:10 0 with asbestos. Here is a letter from '66, would
13:21:24:20 0 you agree that at least Ernie Martin knew there
13:21:31:30 0 was something wrong with asbestos in 1966?

13:21:43:40 0 A It appeared that he did. I never knew
13:21:45:50 0 this.

13:21:45:60 0 Q Do you think if a company like Bendix was
13:21:48:70 0 aware that there was something wrong with asbestos
13:21:50:80 0 in 1966, and they should of passed that on to the
13:22:01:90 0 consumer?

13:22:02:00 0 MR. MENDRZYCKI: Objection to form.

13:22:02:10 0 THE WITNESS: If, if they had known
13:22:02:20 0 this, they should pass it along, I don't
13:22:02:30 0 know that. What did Hendry say? Did
13:22:12:40 0 Hendry say asbestos is carcinogen or

22:15:10 something? What did he say? Do you have
13:22:16:20 that?

13:22:16:30 BY MR. DeLUCA:

13:22:16:40 Q Here is his response, Mr. Drislane.

13:22:24:50 A This is Noel Hendry back to Ernie?

13:22:26:60 Q Right. September 29th, 1966, he said, "I
13:22:31:70 suppose we have to bear with people who have
13:22:33:80 nothing better to do than to create alarm, but we
13:22:35:90 are not alarmed and we live and sleep with the
13:22:36:00 stuff." That was his response.

13:22:41:10 MR. MENDRZYCKI: That is not his
13:22:43:20 whole response. If you read the whole
13:22:45:30 letter, you see his whole response.

13:22:46:40 THE WITNESS: I really know nothing
13:22:48:50 about this, the letter or -- looking back
13:22:50:60 with hindsight, it was a very callous
13:22:54:70 thing for Ernie to say, but looking back
13:23:00:80 with hindsight, I think he was just
13:23:01:90 trying to joke.

13:23:02:00 BY MR. DeLUCA:

13:23:02:10 Q You never discussed this with him, did
13:23:02:20 you?

13:23:02:30 A No.

13:23:02:40 Q Do you know if he is still living?

23:13:10 A I think he went to his reward. He was
13:23:16:20 several years older than I.

13:23:20:30 Q Were you aware, Mr. Drislane, in the
13:23:24:40 mid-'70s that excessive amounts of asbestos dust
13:23:33:50 could be found in most brake service centers?

13:23:37:60 A Do you have counts on that? In other
13:23:39:70 words, somebody said that, but what were -- do
13:23:43:80 they have fiber counts at that time? I didn't
13:23:45:90 think they had fiber counts until around 1970s.
13:23:46:10 When are we talking about?

13:23:50:10 Q Well let me show you what you said on
13:24:01:20 page 343 of the deposition you gave in 1999, and
13:24:11:30 the question at line 2 on page 343 was: "Would it
13:24:15:40 be fair to say that at least by 1976 that you as
13:24:18:50 Executive Director of the FMSI were well aware
13:24:21:60 that there was no question that excessive amounts
13:24:28:70 of asbestos dust exist in many brake service
13:24:30:80 centers?" And your answer was: "I believe that's
13:24:31:90 so." Do you recall giving that testimony?

13:24:32:00 A I am sure I did, because that's -- that
13:24:32:10 appears to be what I said in answer to the
13:24:42:20 question. Got to remember people were not really
13:24:42:30 getting hip to the problem until the mid-'70s.

:24:42:40 Q People meaning the brake companies?

24:50:100

A The brake companies and our customers themselves.

13:24:52:200

13:24:52:300

Q I want you to assume that maybe they were hip to the problem a little earlier than you think.

13:25:00:400

13:25:01:500

13:25:01:600

A Maybe they were.

13:25:03:700

Q Shouldn't they have passed that along to the consumer?

13:25:05:800

13:25:07:900

A Well, who do you mean by the consumer?

13:25:09:100

Q People who buy brakes, people who are exposed to brakes?

13:25:11:100

13:25:13:200

A The people buying brakes, if I go to the Midas shop or to the car dealer to get brakes installed, they should have been told by their supplier, yeah.

13:25:15:300

13:25:17:400

13:25:19:500

13:25:21:600

Q So you think it is the supplier that had the duty to warn not the person who made the product?

13:25:23:700

13:25:25:800

13:25:27:900

A They are the supplier, the person who made, I'm sorry. The person who made the brakes or manufactured the brake lining, be it JM or Raybestos or Bendix, or whoever you got in mind, should of with the information they were given at when it was given, looking back with all the

13:25:29:000

13:25:31:100

13:25:33:200

13:25:35:300

:25:42:400

hindsight you have, should have notified those people in the brake shops, yes.

Q And that was one of the reasons why you were giving this information to your members, you gave them medical articles about asbestos, you gave them articles about industrial hygiene, you gave them articles about vacuum cleaners, you gave them articles about levels of exposure and brake shops, you were giving that information to your members in the hopes that they would do something with it; weren't you?

MR. MENDRZYCKI: Objection to form.

THE WITNESS: Answer the question

or --

BY MR. DeLUCA:

Q Yes.

A I was doing what the members of my brake Asbestos Study Committee recommended that I do. I didn't come up with any of these ideas myself. The Asbestos Study Committee suggested. Sometimes Ike would say, "You ought to send this to the members." And I would make up a bulletin and send it to the members. It is based on what our members had said, and they were very interested in

26:50:10 better vacuuming equipment, you know, to keep the
26:54:20 concentrations of dust down. So I did send them
27:00:30 that stuff, yes.

Q It was your understanding that when you
27:01:40 did that that you were passing that information
27:03:50 along to your members, number one, because you
27:05:60 were told to, but number two, in the hopes they
27:09:70 might do something with it?

MR. MENDRZYCKI: Objection to the
27:16:80 form.
27:16:90

THE WITNESS: Yes.
27:20:10
27:20:10

BY MR. DeLUCA:
27:20:10
27:21:30

Q I think a couple times today you have
27:21:40 used the term "asbestos problem," and I believe
27:24:50 that phrase has been used in a number of documents
27:28:60 which I haven't shown you yet, but is that a term
27:31:70 with which you have some familiarity?

A No. But the two words go together.
27:31:80 There was an asbestos problem. I mean, I --
27:31:90

Q What was the problem as you see it?
27:32:00

A Apparently asbestos could cause
27:42:10 asbestosis and other kindred diseases, such as
27:42:20 cancer in certain cases. That was the problem.
28:02:30 The problem was a health problem.
28:22:40

Q Was one of the problems with asbestos the fact that industry was going to be regulated and that those regulations were going to cost money?

A I don't know that people anticipated the regulations at that time, and but probably along around 1976 they probably did, probably.

Q Okay. Let me show you what you said in '99. I think it is consistent. I just want to be sure.

MR. HARKINS: Then what is the purpose of showing it?

MR. DeLUCA: Because I want to be sure, counselor.

MR. HARKINS: Here again, publishing a document without a foundation.

BY MR. DeLUCA:

Q Sir, did you give a deposition in 1999?

A Yes.

Q We established that already. There was a court reporter there, you were under oath?

A Yes.

Q It was typed up?

A It may have been. I didn't see it. I didn't ask for it.

29:31:10 0 Q I know. We established that earlier
13:29:33:20 0 also. Page 186 you say at line 7, they are
13:29:39:30 0 talking about the December of '73, the question
13:29:41:40 0 was: What did you mean by the asbestos problem in
13:29:43:50 0 December of '73?" Your answer was: "Well, this
13:29:46:60 0 was the year after OSHA was starting to
13:29:48:70 0 investigate asbestos as a hazardous material and
13:29:50:80 0 they were coming out with recommendations. That's
13:29:54:90 0 the problem we are going to be regulated on
13:30:01:00 0 asbestos exposures." Do you see that?

13:30:05:10 0 A Yeah.

13:30:07:20 0 Q Okay. Did you understand that the
13:30:09:30 0 compliance with OSHA regulations was going to be a
13:30:11:40 0 costly thing to do for your members?

13:30:15:50 0 A I didn't know how costly, but it was
13:30:18:60 0 going to cost some money, yes.

13:30:21:70 0 Q They had a lot of things which were
13:30:24:80 0 required of them, including reducing exposures,
13:30:28:90 0 medical monitoring, labeling, proper disposal,
13:30:32:00 0 recordkeeping, things like that?

13:30:35:10 0 A Yeah.

13:30:39:20 0 Q Okay. Every one of those things cost
13:30:42:30 0 money?

13:30:45:40 0 A Yes.

Q Every one of those things cuts down on the bottom line; doesn't it?

A Yes, it does. But -- yes.

Q Have you ever heard the term "encapsulation"?

A Yes.

Q What do you understand that to mean?

A Well instead of the asbestos fibers floating around freely, they might have a resin that encapsulates them. A capsule goes around the asbestos fibers.

Q Did you believe that asbestos containing brakes were encapsulated?

A Essentially, yes.

Q But would you agree that when those brakes are ground, or drilled, or rivetted, or beveled, or tapered, that those asbestos fibers can get up into the air?

A On some of those definitions, yes. Rivetted, no. But repeat them again, and let me answer yes, no on each one of them. They are all different.

Q Well, sure. And maybe you know some more practices that even I don't. But I was talking

32:28:10 0 about grinding?

32:30:20 0 A Grinding, yes, the fibers can be freed
32:31:30 0 up, yes.

32:33:40 0 Q Bevelling?

32:35:50 0 A Yes.

32:35:60 0 Q Tapering?

32:37:70 0 A Yes.

32:37:80 0 Q Drilling?

32:37:90 0 A Yes.

32:39:00 0 Q Chamfering?

32:39:10 0 A Drilling. Chamfering is the same thing
32:41:20 0 as bevelling.

32:41:30 0 Q So I don't get double credit for that.

32:41:40 0 A Rivetting is different. And I question a
32:41:50 0 little bit about drilling. I think they come out
32:51:60 0 sort of as chunks, rather than as fibers.

32:51:70 0 Q Yes, sir. What other work practices are
33:01:80 0 you aware of that can cause those asbestos fibers
33:01:90 0 to become airborne?

33:02:00 0 A Well, your bevelling equals chamfering
33:12:10 0 that, grinding, tapering, or whatever. I can't
33:12:20 0 remember them.

33:12:30 0 Q Okay. All right. And you understood
33:12:40 0 that those work practices even in the '70s were

13:33:26:100 work practices that could give rise to airborne
13:33:31:200 asbestos dust?

13:33:31:300 A Probably in the late '70s, yes. I can't
13:33:35:400 give chronologies on this thing. I know you
13:33:37:500 weren't asking for them, but I'm saying they are
13:33:39:600 relative to the problem.

13:33:41:700 Q Let me see if I can make it easier for
13:33:43:800 you. At some point you knew that and the
13:34:03:900 documents would show whenever that is, fair
13:34:07:100 enough?

13:34:07:1100 A I don't know the documents would show it.

13:34:11:200 Q We will take those when we get there. Do
13:35:01:300 you need to take a little break?

13:35:01:400 A No. I would like to keep going.

13:35:07:500 Q All right. I want to show you what I am
13:35:09:600 going to mark as Plaintiff's Exhibit 4, which is
13:35:13:700 the minutes of the meeting of the Asbestos Study
13:35:41:800 Committee dated September 15th, 1971. Hand that
13:35:51:900 to you, sir.

13:35:52:000 A I have looked at it. I'm not going to
13:36:02:100 read it.

13:36:02:200 Q No, I wasn't asking you to, sir. As you
13:36:02:300 can see, the projector cut out again and we are
13:36:02:400 going to need to take a technical break here.

36:13:100
13:38:45:200
13:38:48:300
13:38:48:400
13:38:50:500
13:38:52:600
13:38:54:700
13:38:54:800

MR. PIAZZA: The time is now 1:35,
we will pause in the testimony of
Mr. Drislane.

13:38:48:400
(A short recess was taken.)

13:38:50:500
13:38:52:600
13:38:54:700
13:38:54:800

MR. PIAZZA: The time is now 1:38,
we will resume the testimony of
Mr. Drislane.

13:38:54:800
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13:39:03:100
13:39:07:200
13:39:11:300
13:39:16:400
13:39:18:500
13:39:18:600
13:39:21:700
13:39:21:800
13:39:21:900
13:39:32:000
13:39:32:100
13:39:32:200
13:39:32:300
13:39:32:400

BY MR. DeLUCA:

13:39:00:900
13:39:01:000
13:39:03:100
13:39:07:200
13:39:11:300
13:39:16:400
13:39:18:500
13:39:18:600
13:39:21:700
13:39:21:800
13:39:21:900
13:39:32:000
13:39:32:100
13:39:32:200
13:39:32:300
13:39:32:400

Q Mr. Drislane, I'm going to call your
attention to certain portions of Exhibit 4, and
that was the minutes of the meeting of the
Asbestos Study Committee. Am I correct, sir, that
when you took these types of minutes you would
always list who was present?

13:39:18:500
13:39:18:600
13:39:21:700
13:39:21:800
13:39:21:900
13:39:32:000
13:39:32:100
13:39:32:200
13:39:32:300
13:39:32:400

A Yes.

13:39:18:600
13:39:21:700
13:39:21:800
13:39:21:900
13:39:32:000
13:39:32:100
13:39:32:200
13:39:32:300
13:39:32:400

Q In fact, in this particular series of
minutes you note that representatives of
Raybestos-Manhattan, Firestone, Abex,
Johns-Manville, Bendix and Carlisle were present?

13:39:32:000
13:39:32:100
13:39:32:200
13:39:32:300
13:39:32:400

A Yes.

13:39:32:100
13:39:32:200
13:39:32:300
13:39:32:400

Q Correct?

13:39:32:200
13:39:32:300
13:39:32:400

A Yes.

13:39:32:300
13:39:32:400

Q And in addition, you had people from the
AIA there?

39:37:100

A Yep.

13:39:37:200

Q A few people including some public

13:39:39:300

relation attorneys from the Hill and Knowlton 134
in Washington, D.C.?

13:39:41:400

13:39:43:500

A Yes.

13:39:43:600

Q Again, you were there as the Executive
Secretary reporting on the meeting?

13:39:46:700

13:39:50:800

A That's correct.

13:39:50:900

Q Do these minutes, particularly in this

13:39:52:100

paragraph here that I have up on the screen, do

13:40:00:1100

these minutes reflect a desire of the FMSI to work

13:40:01:200

closely with the AIA in presenting the industry

13:40:01:300

viewpoint to regulatory agencies?

13:40:02:1400

A No. We never hooked up with the Asbestos

13:40:02:1500

Information Association in any kind of an

13:40:02:1600

agreement to exchange information. It is just

13:40:03:1700

that they were the only ones that had any

13:40:03:1800

background on this thing here other than the

13:40:03:1900

regulatory agencies in Washington so we listened

13:40:04:2000

to them. I don't see --

13:40:05:2100

Q The -- strike that.

13:40:05:2200

The position of the AIA in representing

13:41:00:2300

asbestos companies was fairly close to the

14:00:2400

position of the FMSI and its members, correct,

13:41:09:100 they were coming from the same, same place, so to
13:41:13:200 speak?

13:41:13:300 A We were strictly into friction materials,
13:41:13:400 brake linings and clutch facings. They were all
13:41:16:500 asbestos products and all asbestos types.

13:41:18:600 Q And all these asbestos companies and all
13:41:20:700 these asbestos products were under close scrutiny,
13:41:22:800 and this was industries way of kind of fighting
13:41:26:900 back through the AIA?

13:41:28:100 A I don't know that they are under close
13:41:31:100 scrutiny at that time.

13:41:31:200 Q All right.

13:41:31:300 A There is no questions they were later on.

13:41:41:400 Q And this indicates that this committee,
13:41:41:500 this Asbestos Study Committee could present the
13:41:41:600 brake lining and clutch facing manufacturers'
13:41:41:700 views to both the AIA and to regulatory agencies;
13:41:51:800 correct?

13:41:51:900 A Yes.

13:41:52:000 Q Now would I be correct in doing that or
13:42:02:100 even proposing to do that, that what the FMSI
13:42:02:200 would do would not be to present a balanced view,
13:42:12:300 it would be only to advance industries position?

13:42:12:400 MR. HARKINS: Object to the form.

THE WITNESS: I'm sorry, it was to express brake on the Friction Materials Industries views.

BY MR. DeLUCA:

Q Right. And not to advance everything necessarily that the Institute knew about asbestos or the hazards of asbestos, but to promote the position of its members?

A Yes, but again this is 1971. This is this whole thing was just starting at that time. I mean, I knew nothing about asbestos in 1970. 1971 apparently I learned. Is that what you are asking?

Q I am just -- I just want to establish that when the FMSI and when the AIA would comment on legislation as we will see later in the deposition, or they would submit comment to OSHA or the EPA that the comments they were making were not a balanced review of the whole situation giving the pros and the cons, but merely was advancing those things which benefited industry?

MR. HARKINS: Object to the form.

THE WITNESS: We were giving the viewpoints of industry.

43:31:10 0 BY MR. DeLUCA:

13:43:31:20 0 Q And maybe this is obvious and maybe my
13:43:33:30 0 questions are poor, but you were not giving
13:43:43:40 0 furnished information to OSHA or EPA that would
13:43:46:50 0 hurt industry; correct?

13:43:46:60 0 A Can you just read the question again,
13:43:48:70 0 honey? Because any time you give me a question I
13:43:52:80 0 have to figure out what you are saying. Could you
13:44:15:90 0 repeat it?

13:44:15:00 0 Q I am going to ask the court reporter to
13:44:20:10 0 read it back.

13:44:21:20 0 (The Reporter read back the
13:44:21:30 0 requested portion.)

13:44:21:40 0 THE WITNESS: We probably furnished
13:44:21:50 0 information to OSHA or EPA that they were
13:44:30:60 0 looking for. Like if they were trying to
13:44:31:70 0 find out who are the manufacturers of
13:44:31:80 0 asbestos brake linings in the country, we
13:44:31:90 0 probably gave them that information. We
13:44:32:00 0 helped some of the people, helped some of
13:44:42:10 0 the regulators find out who the cohort
13:44:42:20 0 was that they were supposed to be looking
13:44:42:30 0 at. So we did give information that was
44:42:40 0 helpful to them, I believe, and we gave

information I thought was helpful to Dr. Selikoff and to Bill Nicholson and that. But generally speaking our thing was we were representing the industry, we were giving the industries viewpoint. Don't find that so hard to understand.

BY MR. DeLUCA:

Q One of the other things that's described in these minutes is, again, the efforts of the Illinois Pollution Control Board to, I guess, ban asbestos brake linings. We talked about that earlier; right?

A Yes, you did.

Q Do you recall ultimately what the Illinois Pollution Control Board did in regard to the banning of asbestos brake linings?

A I am going to have to try to put the thing in perspective. The only reason the Illinois Pollution Control Board got mentioned is they happened to be up there in 1969 or 1970. They were a miniscule part of the whole problem, so-called asbestos problem. OSHA and EPA were the real regulators and all that. And that thing, I think, caved in after -- I am saying the Illinois

13:46:16:10 0 Pollution Control Board I think realized that they
13:46:18:20 0 were shutting down the manufacturer of brake
13:46:22:30 0 linings, of asbestos brake linings, and they
13:46:24:40 0 apparently gave in. But I didn't go, I never went
13:46:24:50 0 out to Illinois. It was all based on somebody
13:46:28:60 0 telling me what happened out there. But I think
13:46:30:70 0 that they just gave it up. They probably had a
13:46:54:80 0 meeting and they decided to drop it. But now I
13:47:03:90 0 could be wrong on that.

13:47:07:00 0 Q Let me show you what I am going to mark
13:47:13:10 0 as Plaintiff's Exhibit 5, which is a September
13:47:16:20 0 27th, 1971 letter to you from Dr. E. P. Stefl of
13:47:20:30 0 Raybestos-Manhattan, and I have that for you up on
13:47:24:40 0 the screen, sir. If you want to look at the
13:47:26:50 0 letter that I handed you, that's fine. If you
13:47:37:60 0 want to look at the screen, that's okay also. And
13:47:41:70 0 you mentioned a meeting just a few moments ago. I
13:47:48:80 0 am wondering if this document describes the
13:47:51:90 0 meeting that you referenced?

13:47:54:00 0 A What meeting? What meeting did I talk
13:48:02:10 0 about? I don't know. I can't.

13:48:02:20 0 Q Well you said --

13:48:02:30 0 A I am getting -- my brain is not being
13:48:05:40 0 able to function here you are asking so damn many

13:48:07:100

questions. What are we talking about?

13:48:11:200

Q Well I had asked you ultimately what

13:48:13:300

occurred with the Illinois Pollution Control

13:48:15:400

Board, and you said well, they did not ban brakes

13:48:16:500

and there was a meeting.

13:48:18:600

A Right. Was there a meeting? I don't

13:48:20:700

remember that there was a meeting. Must have been

13:48:24:800

a meeting.

13:48:24:900

Q I thought you said "meeting."

13:48:26:100

A Did I say that? Then I don't know.

13:48:28:100

Q If you look at this last paragraph.

13:48:30:120

A Could I read this thing to you, and then give you your answer?

13:48:33:130

13:48:35:140

Q Sure.

13:48:37:150

A I mean it is going to keep us here all day. Those present in Chicago was so and so and so and so. Two hour meeting was quite cordial and useful. We learned that public hearings would be held in Illinois. Harker indicated a preference of the asbestos through AI testify as a unit rather than each asbestos company. Testimony was given verbally and in writing. Ten copies of the written version would be submitted to the board in advance. In the matter of the brake lining beyond

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13:48:41:170

13:48:45:180

13:48:46:190

13:48:50:200

13:48:52:100

13:48:54:200

13:49:00:230

13:49:00:240

the subject regarding a brief discussion. Harker called it a weak point in our regulations. Harker apparently is Illinois Pollution Control Board. He implied though he did not say that it was necessary in order to gain publicity for the proposed regulations in years.

Q What I am interested in asking you about is whether you know about this meeting here that he advised you up in the last paragraph when he says, "Further, I agreed to advise all the committee members as to what happened at our unofficial meeting with some members of the Illinois Pollution Control Board held in Chicago on September 17th. Since that meeting covered matters other than the ban on asbestos and brake lining, I will quote you from portions of the minutes I have received regarding that session. I would urge that you advise our committee members that this information is to be considered extremely confidential at this point, especially since the meeting was held in advance of the public hearings." Do you see that?

A I wasn't looking. I see that's the last sentence in this last paragraph, correct.

50:11:100

Q Did you understand Mr. Stefl to have gone to this Pollution Control Board to meet with these people kind of like having an ex parte conversation?

13:50:13:200

13:50:16:300

13:50:18:400

13:50:18:500

A I would have to read this thing thoroughly. It is really I guess that's what he did. Is that what you are suggesting he did?

13:50:20:600

13:50:24:700

13:50:26:800

Q Yes.

13:50:26:900

A Then I agree, okay.

13:50:28:100

Q Do you think that was wrong?

13:50:30:100

A No. I never gave any thought to it frankly.

13:50:31:200

13:50:31:300

Q Now that you think about it, do you think that was wrong?

13:50:31:400

13:50:31:500

A What was wrong about what?

13:50:41:600

Q About going to this board and meeting with them, having a confidential conversation?

13:50:41:700

13:50:41:800

A No. People have confidential conversations lots of times. I find nothing wrong with that.

13:50:41:900

13:50:42:000

13:50:42:100

Q But they were going to have public hearings on this?

13:50:52:200

13:50:52:300

A Yeah.

50:52:400

Q And this confidential conversation

50:54:100

occurred in advance of the public hearings?

13:51:01:200

A Okay.

13:51:01:300

Q And, in fact, if you keep reading, it

13:51:05:400

indicates that industry should present its

13:51:07:500

testimony at the Waukegan hearing rather than at

13:51:09:600

the Chicago hearing because they expected more

13:51:11:700

people to attend the Chicago hearing, do you see

13:51:15:800

that?

13:51:15:900

A No, I don't see it. But it is in there

13:51:16:000

someplace, I am sure you are not reading from -- I

13:51:20:100

can't run my eyes back and forth on this thing

13:51:21:200

here. Yes, that's what is apparently in here.

13:51:21:300

Why don't you say that's what in here and I will

13:51:21:400

agree?

13:51:21:500

Q That's what's in there.

13:51:30:1600

A Okay. Then I agree.

13:51:31:700

Q And wasn't that wrong?

13:51:31:800

A I can't judge what people did as wrong.

13:51:31:900

Maybe there was good reason. Maybe they felt

13:51:32:000

there was real reason to do something like that.

13:51:32:100

Q I don't dispute that, sir, but I am just

13:51:42:200

asking you if this has the appearance of

13:51:42:300

impropriety?

:51:42:400

A Not to me. Okay? You get together

51:48:100 before a meeting. I can get together before I
13:51:52:200 meet with you, can't I?

Q No. Actually if you and I were to talk
13:51:54:300 before this deposition, that would be
13:52:00:400 inappropriate.
13:52:01:500

A I can talk to my attorney though before I
13:52:01:600 sit down with you, can't I?
13:52:05:700

Q Sure.
13:52:05:800

A I can talk to these gentlemen over here
13:52:07:900 if I want to before I meet with you, can't I?
13:52:09:100

Q That's true.
13:52:11:100

A I don't see what's wrong with them
13:52:11:200 meeting with the Illinois Pollution Control Board.
13:52:11:300

Q Well why was it to be kept confidential
13:52:11:400 if there was nothing wrong it?
13:52:11:500

A Ask Mr. whatever his name is, Stefl.
13:52:21:600

Q You have no opinion on it?
13:52:21:700

A No. I didn't read this stuff. It was
13:52:21:800 all being thrown at me at that time. I knew this
13:52:21:900 had something to do with the asbestos problem so I
13:52:32:000 probably circulated it to my members. As far as
13:52:32:100 having an opinion on it, I didn't.
13:52:32:200

Q And indeed you did, sir, and that will be
13:52:32:300 marked as Exhibit 6.
13:52:32:400

52:41:100

A Well why didn't you tell me that?

13:52:43:200

Q And that's a September 30th, 1971 letter that you addressed to the Asbestos Study Committee, and you copied a whole bunch of other folks. Let me pull that up here for you. And this goes on to state that you were passing along the information that Dr. Stefl gave you and you again reiterate that it was to be kept confidential --

13:52:46:300

13:52:48:400

13:53:18:500

13:53:20:600

13:53:24:700

13:53:26:800

13:53:28:900

13:53:30:1000

A Okay.

13:53:30:1100

Q -- did you not?

13:53:31:200

A Apparently I did, yes.

13:53:31:300

Q And you don't have an understanding as to why that was?

13:53:31:400

13:53:31:500

A I didn't really understand Dr. Stefl or Ike Weaver or any of these guys, but I did -- I -- I don't know. Dr. Stefl came on kind of quick and disappeared all of a sudden. At least Ike Weaver stayed. Put it this way, I didn't know what was going on.

13:53:41:600

13:53:43:700

13:53:50:800

13:53:51:900

13:54:01:2000

13:54:02:100

Q Here is a letter that you wrote to Dr. Stefl, and I will mark this as 7, dated October 22nd, 1971, and take a look at that. Does this reflect a call that you received from a lady

13:54:02:200

13:54:02:300

13:54:12:400

54:20:100

who was with the Center for Political Research?

13:54:24:200

A Apparently, yeah.

13:54:30:300

Q Okay. And the question she asks you was:

13:54:37:400

What are the brake lining manufacturers doing

13:54:39:500

about asbestos in the environment? Do you recall

13:54:41:600

that call?

13:54:41:700

A I don't doubt I had the call. I don't

13:54:43:800

remember talking with her frankly. But it says it

13:54:46:900

here, I must of.

13:54:48:000

Q You gone on to say that "I believe that

13:54:50:100

she is the part of activist anti-everythings, and

13:54:51:200

while our conversation was polite and restrained,

13:55:00:300

I don't believe she had much technical depth, as

13:55:00:400

suggested by the usual "fiberglass substitute," in

13:55:00:500

quotes, and the apparent prejudgment that asbestos

13:55:00:600

in brake linings is a serious contaminant from the

13:55:00:700

emission viewpoint in the general environment."

13:55:00:800

A That's what I felt at that time.

13:55:00:900

Q Did you resent the position that she had?

13:55:00:000

A No. But fiberglass is one of these

13:55:00:100

things, you know, we are going to have fiberglass

13:55:00:200

replace asbestos, that's ridiculous. I mean, it's

13:55:00:300

still ridiculous. Even 20, 30 years later, it's

13:55:00:400

still ridiculous.

55:43:10 0

Q There were other -- strike that.

55:50:20 0

55:50:30 0

55:54:40 0

56:00:50 0

56:03:60 0

Now with respect to that Illinois Pollution Control Board legislation, did you recommend to the members that they make comments and that the substance of their comments be that there are no substitutes for asbestos, do you recall telling --

56:05:70 0

A Did I say that?

56:07:80 0

Q Yes.

56:07:90 0

A Okay. You say I said it, you probably got some evidence to show that.

56:16:00 0

56:18:10 0

Q You don't recall that?

56:20:20 0

56:24:30 0

56:28:40 0

56:31:50 0

56:33:60 0

56:35:70 0

56:35:80 0

56:35:90 0

56:36:00 0

56:42:10 0

56:52:20 0

57:02:30 0

57:02:40 0

A I don't recall it, no. You show me a piece of paper and I'll recall it. I'm not trying to drag this thing out. It is just that it just goes on.

MR. HARKINS: Do you want to take a break?

THE WITNESS: No.

BY MR. DeLUCA:

56:36:00 0

56:42:10 0

56:52:20 0

57:02:30 0

57:02:40 0

Q Well let me show you that. Let me mark it as Plaintiff's 8, and it is Bulletin 416 from October 28th, 1971. See if that refreshes your recollection.

A What page? You don't want me to read the

57:07:100 whole damn thing, do you?

13:57:09:200 Q No, sir. No, sir.

13:57:11:300 A What do you want me to look at?

13:57:15:400 Q The second page where you state, "The
13:57:16:500 comments must be your own. We suggest that the
13:57:20:600 primary force of these comments might be the lack
13:57:24:700 of availability of known substitutes at this
13:57:30:800 time."

13:57:30:900 A Yes. Generally speaking there weren't
13:57:31:000 substitutes available at that time.

13:57:31:100 Q Sir, there were a number of different
13:57:31:200 types of brakes at that time that did not contain
13:57:41:300 asbestos; correct?

13:57:41:400 A There were tests, test materials in the
13:57:41:500 field, yes.

13:57:41:600 Q In fact, you were working on some brakes
13:57:41:700 for airplanes, ceramic metallic brakes at Bendix
13:57:51:800 back in the '60s; right?

13:57:51:900 A Yes. They are completely inadequate for
13:58:01:200 passenger cars because -- I won't go into the
13:58:01:100 technical thing.

13:58:01:200 Q There were sintered metal brakes that
13:58:01:300 were used?

58:01:2400 A Right.

58:07:100

Q In fact, they are used on police cars and taxi cabs?

13:58:07:200

13:58:09:300

A Very good. You did some research.

13:58:11:400

Q Back in the '60s; right?

13:58:13:500

A Did you ever drive one of those cars?

13:58:13:600

Q No, I didn't drive any taxis or police cars in the '60s.

13:58:15:700

13:58:16:800

A If you went the first thing in the morning to put your foot on the brake, the thing was just like it was water in your brakes. It just kept on going. The brakes had to be warmed up before they could be effective. So you give the car to a garage attendant. He is up on the second floor, and he is coming down the ramp, as I did, and I told him before, I said, "I got to drive that car down there because the brakes are dead, dead cold." It's a characteristics of metal linings. And I said, "You got to warm them up. You have to drag the brakes for a little bit before you go and use the darn things." And he didn't pay any attention to me. He came down and said, "Jesus Christ," he says, "There is no brakes on that car."

13:58:18:900

13:58:21:000

13:58:21:100

13:58:21:200

13:58:31:300

13:58:31:400

13:58:31:500

13:58:31:600

13:58:31:700

13:58:41:800

13:58:41:900

13:58:42:000

13:58:42:100

13:58:52:200

13:58:52:300

58:52:400

That's the characteristic of sintered metal

59:00:100 brakes on cars. They are fine on aircraft because
13:59:01:200 you know what, they are landing at 130 miles an
13:59:03:300 hour, whatever it is. The heat is in those brakes
13:59:05:400 right away. But they are no good for passenger
13:59:09:500 cars, no good for trucks, no good for anything
13:59:11:600 else. So there you have the substitute for it.
13:59:13:700 But there were no real good substitutes.
13:59:16:800 Fiberglass was not one. That was a ridiculous
13:59:18:900 one. And they work all through the years after
13:59:20:000 that to come up with the steel fiber-type thing,
13:59:24:100 which gradually they managed to work some of the
13:59:26:200 dead cold characteristics out. But these things
13:59:28:300 were not available at this time. What I say here
13:59:31:400 is exactly true.

13:59:31:500 Q I wasn't suggesting that it was false.

13:59:35:600 A Uh-huh.

13:59:35:700 Q What --

13:59:35:800 A You are telling me there weren't any
13:59:37:900 substitutes. You are telling there were
13:59:39:000 substitutes is what you are suggesting.

13:59:39:100 Q I am asking if you were aware.

13:59:42:200 A I thought you were telling me.

13:59:42:300 Q No, I am not telling you anything.

59:42:400 A Okay.

59:46:100

Q What do they use today in place of the asbestos?

13:59:50:200

13:59:52:300

A Couple of things they use today. Number one, it is a steel, like a steel wool, chopped up steel wool, or a dendritic iron powder.

14:00:00:400

14:00:01:500

"Dendritic" means the leaf like structure on

14:00:03:600

something like that. Those they put in with the

14:00:07:700

resin. The resin binder is the same resin binder

14:00:09:800

or similar resin binders to what they used in

14:00:13:900

asbestos. And those are what gradually took over

14:00:15:000

particularly in the disc brakes. You got to

14:00:16:100

remember drum brakes were common in the early

14:00:18:200

days. Discs didn't really start coming in until

14:00:20:300

mid-'70s. But I mean, just believe me, there were

14:00:24:400

no other substitutes available at that particular

14:00:26:500

time.

14:00:28:600

If you want to go and work on that one, I will

14:00:28:700

be happy to work. You will pay me for it though.

14:00:31:800

Q Pay you to do what, conduct a --

14:00:35:900

A To tell you why the reasons were when you

14:00:37:000

couldn't use this brake or couldn't use that

14:00:42:100

brake. Why should I? They were not available.

14:00:46:200

What I said is correct.

14:00:50:300

Q All right. And attached to that bulletin

:00:52:400

01:00:100 is all the letters that you collected following
14:01:03:200 your bulletin from companies like World Bestos,
14:01:07:300 Maremont, Auto Friction Corp, Brassbestos, and
14:01:15:400 Abex, where pursuant to your direction they wrote
14:01:16:500 to the Illinois Pollution Control Board and
14:01:26:600 advanced the position that the regulations were
14:01:31:700 unworkable; correct?

14:01:31:800 A Yes.

14:01:33:900 Q In fact, you even got a letter in there
14:01:35:000 from the British Friction Materials Council over
14:01:39:100 there in England?

14:01:39:200 A Did I? I agree, I probably did.

14:01:41:300 Q Where the folks over in England who had
14:01:41:400 basically the same job you did, I guess, wrote to
14:01:50:1500 Illinois and said these regulations should not be
14:01:51:600 enacted; right?

14:01:54:700 A I guess that's what they said. I would
14:02:00:1800 expect that they would of said that.

14:02:00:1900 Q Why do you think companies in England
14:02:00:2000 would care what the regulations are in Illinois?

14:02:00:2100 A Because they sell their linings over
14:02:00:2200 here. Did you ever hear of cars coming in from
14:02:00:2300 England or Germany or things?

02:00:2400 Q And if asbestos brakes were made illegal

02:20:100 in Illinois, that would affect their sales of cars
14:02:30:200 and replacement parts; correct?

14:02:31:300 A As far as Illinois is concerned, yes.

14:02:35:400 Q Just so we understand the context of this
14:02:39:500 letter, these regulations weren't proposed because
14:02:43:600 Illinois was concerned about people working with
14:02:45:700 the brakes, they were worried about asbestos
14:02:48:800 emissions into the air, such as what may or may
14:02:50:900 not occur when you hit your brakes while you are
14:03:01:000 driving down the street?

14:03:01:100 A Yeah, I believe that what you said is
14:03:11:200 true.

14:03:11:300 Q And you have seen evidence over the years
14:03:11:400 that would suggest that the ordinary and normal
14:03:11:500 braking process of a car can result in asbestos
14:03:21:600 emissions into the air?

14:03:21:700 MR. MENDRZYCKI: Objection to the
14:03:21:800 form.

14:03:21:900 THE WITNESS: Terribly little amount
14:03:22:000 but, yes, I suppose you take the full
14:03:32:100 lifetime of the set of brakes, 40,000
14:03:42:200 miles or whatever, you might get a pill
14:03:42:300 box full of it. It is very fine. To say
14:03:52:400 more like a talc powder or something like

04:15:10 0 that.

14:04:15:20 0 BY MR. DeLUCA:

14:04:16:30 0 Q Let me show you FMSI 2492, which I will
14:04:23:40 0 mark as Plaintiff's Exhibit 9.

14:04:30:50 0 MR. KRAUSE: What's the date?

14:04:31:60 0 MR. DeLUCA: I'm not sure.

14:04:33:70 0 MR. KRAUSE: Or Jacko.

14:04:35:80 0 BY MR. DeLUCA:

14:04:35:90 0 Q Do you remember this article?

14:04:39:00 0 A No. I know Mike, but I don't remember
14:04:41:10 0 the article. Was it in my files?

14:04:43:20 0 Q Yes, sir. Title is "How Much Asbestos Do
14:04:46:30 0 Vehicles Emit?" Goes on to say that most of the
14:04:48:40 0 asbestos emitted from vehicle brakes and clutches
14:04:50:50 0 is converted to other products with only 3.2
14:05:00:60 0 percent of total asbestos emitted entering the
14:05:01:70 0 atmosphere according to Bendix researchers. Are
14:05:05:80 0 you familiar with that study?

14:05:09:90 0 A No, I am not. I know it was Mike Jacko,
14:05:12:00 0 but that's the only thing I know. You are getting
14:05:14:10 0 into 3.2 percent. You are talking by volume or by
14:05:16:20 0 weight, so forth and so on. I don't know what
14:05:20:30 0 Mike -- Mike is a theoretical person.

14:05:22:40 0 Q Did you know Dr. Jacko?

05:28:100

A Yes.

14:05:28:200

Q Pretty well?

14:05:30:300

A No. I knew him professionally.

14:05:31:400

Q When they say "into the atmosphere," they are talking about the air that we all breathe?

14:05:33:500

14:05:37:600

A Yes.

14:05:37:700

Q That I breathe, that you breathe, that your grandchildren breathe?

14:05:41:800

14:05:43:900

A Yeah.

14:05:43:1000

Q Do you have a problem with that?

14:05:46:1000

A No. It's a miniscule amount. In other words, how much, what is the concentration of asbestos fibers that the person on the road or wherever it is is exposed to? That's what counts to me. This thing here, maybe can you show me more of the article?

14:05:51:200

14:05:52:300

14:06:01:400

14:06:01:500

14:06:05:600

14:06:07:700

Q Sure. Actually if you give me a moment, I will give you the whole thing. In fact, that is going to be very easy to do now since the projector cut off. Off the record, please.

14:06:09:800

14:06:13:900

14:06:16:000

14:06:18:100

14:11:32:200

14:11:32:300

14:11:32:400

MR. PIAZZA: The time is 2:05, we will take a pause in the testimony of Mr. Drislane.

(A short recess was taken.)

MR. PIAZZA: The time is now 2:10,
we will resume the testimony of
Mr. Drislane.

BY MR. DeLUCA:

Q Mr. Drislane, you have had a chance to
review Exhibit 9?

A Yes.

Q Did your review of that document lead you
to want to make any additional comments about it?

A No.

Q Okay. Let me show you what I have marked
as Exhibit 10, which is a memo dated December 3rd,
1971 to the Johns-Manville Environmental Health
Task Force, AIA/NA Member Companies, some other
folks, you appeared to be cc'd on this, do you see
that?

A Yes.

Q And this is a memo from Mr. Raines who
you understood to be associated with the AIA?

A I never remember Mr. Raines.

Q Okay.

A I remember Mr. Mereness and I remember
Mr. Pigg.

Q Nonetheless, you see that he attaches the

12:30:100 final, the proposed final draft of that Illinois
14:12:33:200 regulation, and he notes that one of the most
14:12:35:300 important changes was that the section banning the
14:12:39:400 use of asbestos containing brake linings after
14:12:41:500 1975 was eliminated?

14:12:45:600 A Okay.

14:12:46:700 Q All right?

14:12:48:800 A Yes.

14:12:48:900 Q And you go on to the next page on the
14:12:51:000 bottom, Mr. Raines says, "It's indeed an
14:12:54:100 encouraging sign to find that in this era of
14:13:01:200 national environmental panic, a well-documented
14:13:03:300 and well-presented industry case can produce
14:13:07:400 results as fair and reasonable as those obtained
14:13:11:500 in the State of Illinois." Do you see that?

14:13:11:600 A Yes.

14:13:11:700 Q Did you think that that was a fair
14:13:21:800 outcome given the one-sided contact that the brake
14:13:24:900 companies had with this board?

14:13:26:000 A I don't remember this particular
14:13:28:100 paragraph. I don't remember this letter. I see
14:13:32:200 the letter here now. I believe it happened. I
14:13:32:300 didn't dwell on this.

14:13:32:400 Q And it wouldn't be your testimony that

13:37:10 0 this result was because of such a well-documented
14:13:39:20 0 and well-presented case that they made, right, we
14:13:43:30 0 have showed you the documents where they went
14:14:09:40 0 there and they talked to them before the hearings,
14:14:13:50 0 do you remember seeing that?

14:14:15:60 0 A Yes, I do.

14:14:16:70 0 Q And would you agree that the Friction
14:14:20:80 0 Materials Standards Institute was active and
14:14:24:90 0 instrumental in getting that proposed legislation
14:14:28:10 0 removed?

14:14:28:11 0 A No. This was a really a zilch chapping
14:14:31:20 0 at that time. I never paid any attention to that
14:14:31:30 0 Illinois Pollution Control Board. Because the
14:14:37:40 0 idea of going and banning the friction materials,
14:14:39:50 0 asbestos and friction materials in five years was
14:14:41:60 0 so to me outlandish that it couldn't happen, but
14:14:43:70 0 we went through the motions of passing things on
14:14:45:80 0 to people and to commenting on it, yeah. Now ten
14:15:01:90 0 years later, okay.

14:15:02:00 0 Q Let me hand you as Exhibit 12, a letter
14:15:07:10 0 from Dr. -- excuse me, from Mr. Nelson, who was
14:15:09:20 0 with Abex, do you remember him?

14:15:11:30 0 A Yes.

15:11:24 0 Q In fact, I think he copied you on this,

15:13:10 0

and this is a letter he sent over to England.

14:15:16:20 0

It is dated January 14th, 1972. I want to show

14:15:22:30 0

you what he thought about who was successful in

14:15:24:40 0

getting this legislation removed. Last paragraph,

14:15:26:50 0

first page, sir. "I am taking the liberty of

14:15:30:60 0

sending the copy of your attachments to the

14:15:31:70 0

Frictions Materials Standards Institute as they

14:15:35:80 0

were active and instrumental in getting this

14:15:37:90 0

proposal removed."

14:15:37:10 0

A Uh-huh. Okay.

14:15:39:10 0

Q If that's not your recollection, do you

14:15:41:20 0

know why he said that?

14:15:41:30 0

A Bob was a great promoter of the FMSI, and

14:15:41:40 0

he wanted to show that everything that the FMSI

14:15:41:50 0

did was great and good. Like I say it was good,

14:15:51:60 0

but I don't say necessarily it was great. So Bob

14:15:51:70 0

was giving me a pat in the back.

14:16:01:80 0

Q Did you think it was appropriate for the

14:16:01:90 0

FMSI to comment on proposed regulations concerning

14:16:02:00 0

asbestos in this time frame?

14:16:12:10 0

A Did I think it was appropriate for the

14:16:12:20 0

FMSI to comment on asbestos regulations at this

14:16:12:30 0

time?

16:12:40 0

Q Yes, sir.

16:18:10 0

A Yes, I thought we should give input to the -- to the regulators, yes.

14:16:22:20 0

14:16:24:30 0

Q Did you ever question the propriety of doing that?

14:16:28:40 0

14:16:28:50 0

A No, I didn't, no.

14:16:30:60 0

14:16:31:70 0

Q Did you ever suggest to them that maybe instead of getting involved, we should just keep our eye on what happens, and the only thing the Institute should do is pass that along?

14:16:35:80 0

14:16:39:90 0

14:16:41:00 0

A In retrospect I go right along with you, yes.

14:16:45:10 0

14:16:50:20 0

Q Okay. In fact, let me show you 13, which is a memo you wrote January 26, '72.

14:16:52:30 0

14:17:00:40 0

A I wish everything I could do would be in hindsight, you know.

14:17:01:50 0

14:17:03:60 0

MR. KRAUSE: What was the date of that again?

14:17:05:70 0

14:17:05:80 0

MR. DeLUCA: That was January 26, '72, sir.

14:17:07:90 0

14:17:08:00 0

MR. KRAUSE: The one you are showing him now?

14:17:09:10 0

14:17:12:20 0

MR. DeLUCA: Yes, sir. January 26th, '72.

14:17:12:30 0

17:13:10 0

BY MR. DeLUCA:

14:17:13:20 0

Q And, in fact, right here you say,

14:17:13:30 0

Mr. Drislane, you say should, speaking of the

14:17:16:40 0

FMSI, "Should it get involved on commenting on

14:17:18:50 0

proposed regulations concerning asbestos, or

14:17:20:60 0

should it serve more as a monitor to keep the

14:17:43:70 0

membership advised?" That was something you

14:17:45:80 0

raised?

14:17:45:90 0

A Yeah, okay.

14:17:46:10 0

Q Do you remember what the reaction was of

14:17:48:10 0

your membership?

14:17:50:20 0

A No, I do not.

14:17:52:30 0

Q But you do remember doing other stuff

14:17:54:40 0

like this years down the road though?

14:18:01:50 0

A Yes.

14:18:01:60 0

Q So obviously your membership felt that

14:18:03:70 0

this type of involvement was within the scope of

14:18:07:80 0

the FMSI's activities?

14:18:09:90 0

A Some people thought one way. Others

14:18:12:00 0

thought a different way. We went along with

14:18:12:10 0

whatever they, I guess the Asbestos Study

14:18:20:20 0

Committee chairman said. We never had a vote as

14:18:22:30 0

such, but they wanted to continue commenting, they

18:32:40 0

continued commenting.

18:35:10 0

Q Let me show you as Exhibit 14 minutes of the Asbestos Study Committee dated February 10th, 1972, and hand that to you.

14:19:35:20 0

14:19:41:30 0

14:19:45:40 0

You were -- I almost said a bad word there.

14:19:46:50 0

The future course of the Asbestos Study

14:19:46:60 0

Committee was discussed at this meeting?

14:19:50:70 0

A Where does it say that? What page, do

14:19:52:80 0

you know?

14:19:52:90 0

Q Page 4, sir.

14:19:54:00 0

A Page 4.

14:19:54:10 0

Q And some of your members thought that the

14:20:01:20 0

Asbestos Study Committee should exist for

14:20:03:30 0

screening and passing on informations on

14:20:05:40 0

information to its members and they didn't feel

14:20:11:50 0

that the committee should be used as a vehicle to

14:20:21:60 0

comment directly on regulations.

14:20:21:70 0

A Yeah, so --

14:20:21:80 0

Q Do you recall which of the members felt

14:20:21:90 0

that the committee should stay out of politics?

14:20:32:00 0

A I have no idea.

14:20:32:10 0

Q Do you remember the ones that were

14:20:42:20 0

interested in influencing legislation?

14:20:42:30 0

A No, I don't. Maybe Ike was, I'm not

:20:42:40 0

sure. I don't know.

20:45:10 0

Q Have you -- do you know whatever became of Mr. Weaver? Do you know if he is still living or where he would live?

14:20:46:20 0

14:20:50:30 0

14:20:52:40 0

A No, I have no idea.

14:20:52:50 0

14:21:00:60 0

Q Do you keep in contact with any of the acquaintances that you made over the years?

14:21:03:70 0

A Nope.

14:21:03:80 0

14:21:07:90 0

Q You don't get Christmas cards or holiday cards from anybody that you did business with?

14:21:11:00 0

A No.

14:21:11:10 0

14:21:15:20 0

Q Do you attend the FMSI meetings every year?

14:21:15:30 0

A Nope.

14:21:15:40 0

14:21:21:50 0

Q You don't get the free trip down to Kiawah Island or whatever to rub elbows with your former colleagues?

14:21:31:60 0

14:21:31:70 0

A No. They dropped me like a hot potato.

14:21:35:80 0

Q Did you enjoy your work with the Institute?

14:21:35:90 0

14:21:35:00 0

A Yes.

14:21:35:10 0

Q Was it challenging at times?

14:21:41:20 0

A At times, yeah.

14:21:45:30 0

Q Probably one of the biggest challenges you faced was to keep everybody together as a

21:52:40 0

21:54:10 0

group?

14:21:54:20 0

A That's too general for me.

14:22:00:30 0

Q Were there many instances where your

14:22:01:40 0

members had conflicting views and that they

14:22:03:50 0

would --

14:22:05:60 0

A Absolutely.

14:22:05:70 0

Q -- fight about that kind of thing?

14:22:07:80 0

A I'm sorry if I jumped at. Yes.

14:22:09:90 0

Q Very competitive business your members

14:22:11:00 0

were engaged in; was it not?

14:22:11:10 0

A Yes, they were.

14:22:11:20 0

Q In this time frame as people began to

14:22:11:30 0

look at substitutes for asbestos there was a lot

14:22:21:40 0

of time and money spent in doing that, and

14:22:21:50 0

companies would not share that information with

14:22:21:60 0

one another?

14:22:21:70 0

A No, they wouldn't.

14:22:21:80 0

Q They wanted to maintain that competitive

14:22:31:90 0

edge?

14:22:32:00 0

A They weren't going to give away their

14:22:32:10 0

secrets.

14:22:32:20 0

Q Because to do so would be to give away

14:22:32:30 0

market share if they were ultimately successful?

14:22:32:40 0

A Yes. If you spent a couple million

22:41:10 0 dollars to develop a substitute or something like
14:23:18:20 0 that, are you going to give that to one of your
14:23:22:30 0 competitors?

14:23:22:40 0 Q Do you recall a seminar held at the
14:23:26:50 0 Illinois Institute of Technology in April of 1972?

14:23:31:60 0 A No, I do not.

14:23:33:70 0 Q Did you -- do you recall a gentleman
14:23:35:80 0 named Dr. Colin Harwood?

14:23:37:90 0 A That name strikes me as being associated
14:23:41:00 0 with the Illinois Pollution Control Board, but
14:23:45:10 0 that's all I know.

14:23:45:20 0 Q Let me hand you 15, which is a memo that
14:23:45:30 0 you prepared June 6th of '72 with certain
14:23:50:40 0 attachments, and ask you to take ten seconds just
14:24:01:50 0 to flip through here and maybe familiarize
14:24:02:60 0 yourself with what we have there.

14:24:02:70 0 A This is very interesting. Here is what
14:24:04:80 0 Ike is saying in this letter. Your chairman,
14:24:06:90 0 Mr. I. H. Weaver sent this data to me for
14:24:08:00 0 distribution.

14:24:08:10 0 Q Those are your words, sir?

14:24:08:20 0 A This is mine, okay. But I am commenting,
14:24:08:30 0 what. He commented on the paper, quote, "The main
14:24:08:40 0 issue I have with Dr. Harwood's conclusion would

24:39:10 0 have to do with whether or not the free fibers or
14:24:41:20 0 fibrils released from friction material
14:24:45:30 0 decomposition are truly hazardous in any way, and
14:24:46:40 0 I also believe he tends to underestimate the
14:24:50:50 0 problem in non-asbestos containing braking
14:24:52:60 0 systems." Now this letter is June 6th of 1972.
14:25:01:70 0 When he wrote that thing about it was read, the
14:25:07:80 0 whole thing was read at that meeting, he said
14:25:09:90 0 something to the effect that all asbestos is
14:25:11:00 0 hazardous or something to that effect. Do you
14:25:13:10 0 recall what I am talking about?

Q Yes, sir.

A In his speech. Now this thing here is
14:25:15:30 0 June of '72, and I think it is after he wrote that
14:25:16:40 0 one there. Here he is saying to the effect that
14:25:24:50 0 he doesn't know whether it is -- I have with
14:25:28:60 0 Dr. Harwood's would have to do with whether or not
14:25:30:70 0 the free fibers or fibrils released from friction
14:25:33:80 0 materials decomposition are truly hazardous in any
14:25:35:90 0 way, and I also believe he tends to underestimate
14:25:37:00 0 the problems in non-asbestos containing braking
14:25:42:10 0 systems. This seems to be sometimes he is in a
14:25:42:20 0 little bit in doubt of what he said earlier.
14:25:42:30 0 Could you agree?
14:25:42:40 0

25:48:100

Q Well I wouldn't, sir, because let me

14:25:50:200

remind you, sir, that this is June of '72 --

14:25:54:300

A Yeah.

14:25:54:400

Q -- and Ike Weaver made that speech in

14:26:00:500

Vail of June of '73.

14:26:01:600

A Oh, is that it?

14:26:05:700

Q Yes. So the speech came after. There

14:26:07:800

was very little doubt in his words in June of '73,

14:26:09:900

you agree?

14:26:09:1000

A Yes. But there was doubt in his mind

14:26:11:1000

back in '72. You know, things changed.

14:26:11:2000

Q Well this is -- this is a memo that you

14:26:11:3000

wrote --

14:26:11:4000

A Yes.

14:26:11:5000

Q -- concerning a seminar that was held in

14:26:20:1600

Illinois?

14:26:20:1700

A Which I did not attend. Which Ike

14:26:20:1800

attended and sent me the information on.

14:26:30:1900

Q And that information shows a couple

14:26:30:2000

things, and you can look through there but one of

14:26:30:2100

the things that that shows was that emissions of

14:26:30:2200

asbestos from friction materials results from

14:26:40:2300

normal day-to-day use, okay, you agree with that?

26:40:2400

A Yeah.

26:45:100

Q And it goes on to say that even at the level of one percent, and remember I showed you that Bendix thing about 3.2 percent?

14:26:48:200

14:26:50:300

14:26:54:400

A Dr. Jacko's report.

14:26:54:500

14:27:00:600

Q Yeah. But even at the level of one percent this states, that the total emissions must be considerable when the total tonnage in use is considered. In other words, all those cars all around the country that use asbestos brakes, even if they only emit one percent that becomes a lot, did you understand that in 1972?

14:27:05:700

14:27:09:800

14:27:11:900

14:27:15:1000

14:27:18:1000

14:27:21:2000

A No, I don't believe so, because I believe that a lot of the so-called wear debris that goes into the atmosphere fell to the ground or fell into the streams. It was also a pollutant of course doing that, but it was not the kind of fibers that people were breathing, I didn't believe. But I am saying a lot of that dust went down to the ground.

14:27:24:3000

14:27:26:4000

14:27:30:5000

14:27:31:6000

14:27:35:7000

14:27:37:8000

14:27:39:9000

14:27:39:2000

Q So it dropped out of the air that we breathe and fell into the water that we drink?

14:27:42:1000

14:27:45:2000

A That is probably true, yes.

14:27:50:3000

Q And you would agree with me, sir, that asbestos does not do the human body any good?

14:27:52:4000

27:54:100 A I can't take that. Hell, yes, look at
14:28:01:200 the -- if only they had asbestos in those damn
14:28:03:300 buildings down at the World Trade Center, maybe
14:28:05:400 that fire could have been stopped a little bit.
14:28:07:500 Yes, I say asbestos does some good.

14:28:09:600 Q Move to strike as non-responsive.

14:28:13:700 A What's that?

14:28:13:800 Q Move to strike as non-responsive. It's a
14:28:15:900 legal thing. Don't worry about it.

14:28:16:000 A What am I supposed to do? Am I supposed
14:28:21:100 to answer the question?

14:28:24:200 MR. HARKINS: You did.

14:28:24:300 MR. DeLUCA: You did.

14:28:26:400 MR. HARKINS: In a nice response,
14:30:24:500 frivolous response.

14:30:26:600 MR. DeLUCA: Move to strike the
14:30:28:700 comment of counsel also.

14:30:31:800 BY MR. DeLUCA:

14:30:31:900 Q Let me hand you as 16 a letter from the
14:30:32:000 AIA dated July 5th, 1972. I'm going to call your
14:30:42:100 attention to paragraph 8, which appears on the
14:30:42:200 fourth page. Obviously, if you want to look at
14:30:42:300 the whole letter, you are welcome to do so. This
14:30:52:400 is a letter that was written by Matthew Swetonic.

31:03:10 0

We talked about him earlier?

14:31:05:20 0

A Yes.

14:31:07:30 0

Q By the way, did you ever -- did you ever

14:31:09:40 0

hear the good news, bad news speech that Matthew

14:31:16:50 0

Swetonic made in 1973?

14:31:20:60 0

A I don't recall.

14:31:20:70 0

Q The gist of that was that the bad news is

14:31:22:80 0

that a certain number of people are going to get

14:31:26:90 0

sick, but the good news is that no one is really

14:31:31:00 0

paying any attention, does that refresh your

14:31:33:10 0

recollection?

14:31:33:20 0

A Nope.

14:31:33:30 0

Q Mr. Swetonic in this letter, and this is

14:31:37:40 0

from the files of the FMSI --

14:31:41:50 0

A This is from the FMSI. It doesn't show

14:31:43:60 0

me as being copied.

14:31:45:70 0

Q You can look on the bottom right-hand

14:31:46:80 0

corner and see that there FMSI Bate stamp.

14:31:50:90 0

A That's not a FMSI Bate stamp. That is

14:31:52:00 0

somebody else Bate stamp.

14:31:54:10 0

Q I will represent to you that that stamp

14:32:00:20 0

that was placed on there was placed on there after

14:32:00:30 0

these documents were produced by the Institute in

14:32:00:40 0

June of this year, and that this document is from

32:07:100

the files of the FMSI. I think your counsel would stipulate to that.

14:32:11:200

14:32:11:300

A Well, I just I don't recognize this as

14:32:13:400

being any kind of a stamp that we ever put on the

14:32:16:500

things. I have seen them on a lot of your things.

14:32:18:600

Q You didn't put that there, sir. The court reporter did.

14:32:20:700

14:32:22:800

A The next part of the thing is James

14:32:28:900

Armstrong, the Bendix Corporation is the copy. He

14:32:30:000

was chairman of our Asbestos Study Committee, but

14:32:31:100

he was on the committee. I am not sure at that

14:32:31:200

time, but I don't see a copy going to us.

14:32:31:300

Q Well maybe that's how you got. In any

14:32:31:400

event, I got it from the FMSI, and I want to ask

14:32:41:500

you about paragraph 8.

14:32:41:600

A Okay.

14:32:41:700

Q It talks about notifying employees who

14:32:41:800

were exposed over the permissible limit, and one

14:32:51:900

of the things that Mr. Swetonic questions is

14:33:02:000

whether it would be necessary to notify an

14:33:02:100

employee by registered letter or whether it would

14:33:02:200

simply be enough to post a notice on a bulletin

14:33:02:300

board?

14:33:02:400

A That's what it says. That's what it

33:13:10 0

says.

14:33:15:20 0

Q And he goes on to say that we discussed

14:33:16:30 0

this with legal counsel and that they indicated

14:33:18:40 0

that the answer of a question would be in favor of

14:33:22:50 0

the registered letter approach, and once they had

14:33:24:60 0

that opinion they decided not to press the issue

14:33:28:70 0

but they would leave it up to companies to make

14:33:30:80 0

their own choices?

14:33:31:90 0

A To my knowledge I have never seen this

14:33:31:00 0

letter before. Okay?

14:33:31:10 0

Q All right. Do you think that workers who

14:33:41:20 0

were exposed to asbestos in excess of the limit

14:33:41:30 0

should have been told of that?

14:33:41:40 0

A I believe that around 1978 or '79, yes,

14:33:51:50 0

that would be so. Whether I would have believed

14:34:01:60 0

it early on, I don't know.

14:34:01:70 0

Q What would have changed your opinion in

14:34:01:80 0

the '78 time frame?

14:34:01:90 0

A Regulations coming out of Washington. If

14:34:02:00 0

they said it was, I would accept the fact that it

14:34:12:10 0

was. I think the OSHA was at least honest.

14:34:12:20 0

Q Well, sir, I am not asking you for your

14:34:12:30 0

interpretation of what the law required. I am

:34:12:40 0

just asking you as a matter of human decency

34:22:100

whether you think workers who were exposed to potentially hazardous concentrations of asbestos should have been told?

14:34:26:200

14:34:28:300

14:34:30:400

A They were told.

14:34:31:500

Q They were?

14:34:31:600

A They were told, but maybe not with

14:34:33:700

official documents and all that stuff. But by the middle of the '70s the fact that asbestos was a hazard was known. It was in these little books that we published, and stuff like that.

14:34:35:800

14:34:39:900

14:34:41:000

14:34:41:100

Q I'm just asking you whether you think

14:34:41:200

people who worked with brakes should have been

14:34:41:300

told if they were being exposed to excess levels of asbestos?

14:34:51:400

14:34:51:500

A Told how? By having a registered letter

14:34:51:600

sent to them or read by a telephone call, or a

14:35:01:700

notice on the bulletin? That's what they were

14:35:01:800

talking about; isn't it?

14:35:01:900

Q Well do you know why that the AIA decided

14:35:12:000

to -- why they seemed to prefer a posting on a

14:35:12:100

bulletin board as opposed to a registered letter?

14:35:12:200

A I have no idea.

14:35:12:300

Q They are trying to hide this, weren't

14:35:12:400

they?

35:18:10 0 A No. I think it was probably the cost of
14:35:20:20 0 all these things.

14:35:22:30 0 Q They were trying to save money?

14:35:24:40 0 A Probably trying to save money.

14:35:26:50 0 Q You think because of the postage?

14:35:28:60 0 A That is my guess. My guess is probably
14:35:30:70 0 not good enough for you.

14:35:31:80 0 Q Well if that's your guess, that's fine.
14:35:33:90 0 You don't think they were trying to hide this or
14:35:35:10 0 keep this information secret?

14:35:37:10 0 A I don't believe so.

14:35:39:20 0 Q Based upon all the contact you had with
14:35:41:30 0 these various asbestos companies, you think that
14:35:43:40 0 is something that they would never ever do?

14:35:45:50 0 A I can't tell. I can tell you my
14:35:47:60 0 experience with Bendix. Bendix would not have
14:35:49:70 0 done it, I don't believe. I can't tell you what
14:35:51:80 0 other people, what they were like. Couldn't
14:35:53:90 0 belief all these things that have happened with
14:36:00:00 0 management today that have happened. I believed
14:36:02:10 0 all those people were telling the truth back in
14:36:04:20 0 the old days. I didn't realize they were crooks.
14:36:06:30 0 I think most of the people that I dealt with were
14:36:08:40 0 honest people.

36:13:100

Q You haven't worked for Bendix since 1968; correct?

14:36:15:200

14:36:15:300

A I think the year might have been 1966, but I am not sure.

14:36:20:400

14:36:22:500

Q You ever meet with Bendix's lawyers?

14:36:26:600

A Trying to think I did. I did back when I was actively working.

14:36:28:700

14:36:28:800

Q I mean in recent years?

14:36:30:900

A No.

14:36:31:000

Q Have you ever been called upon to act as a consultant by any of the companies who made or sold brakes?

14:36:31:100

14:36:31:200

14:36:54:300

A No.

14:36:54:400

Q For instance, Bendix hasn't retained you as a consultant?

14:37:01:500

14:37:01:600

A No, they have not.

14:37:01:700

Q Did the -- did the members of the FMSI ever communicate with one another as to whether or not they were warning, and if so, the substance of the warning they were given?

14:37:01:800

14:37:11:900

14:37:12:000

A Only to the extent that of that poll that we took there.

14:37:12:100

14:37:22:200

14:37:22:300

Q Was there ever any conversations to the effect that if you are going to warn, please let

:37:22:400

37:31:10 0

us know what you are saying so that we can either warn consistent with you or persuade you otherwise?

14:37:33:20 0

14:37:37:30 0

14:37:37:40 0

14:37:39:50 0

14:37:41:60 0

14:37:48:70 0

14:38:01:80 0

A I don't believe so, but I am sure you have got a piece of paper that is going to say I said this or said that or something else. So have you got the piece of paper? Can you produce it now? I don't believe so.

14:38:05:90 0

14:38:07:10 0

14:38:18:10 0

14:38:21:20 0

14:38:48:30 0

14:39:00:40 0

14:39:01:50 0

Q I will show you what I will mark as Exhibit 17, which is again a letter from Mr. Swetonic dated July 12th, 1972, yeah, that's Plaintiff's 17, and hand that to you. I am out of paper clips so I ask you to try to keep that together. Here Mr. Swetonic is -- excuse me, strike that.

14:39:01:60 0

14:39:05:70 0

14:39:09:80 0

14:39:11:90 0

14:39:15:00 0

14:39:18:10 0

14:39:22:20 0

14:39:24:30 0

:39:24:40 0

Here Mr. Swetonic is advocating that each company should decide for itself whether their products require a label, but he is advocating uniformity because of if one company decides to label a certain product and another company decides not to label the same product, that latter company would be placed in a most untenable position with OSHA. Are you aware of any such issues being raised among the members of the FMSI

39:33:100 with regard to their labeling of asbestos brakes?

14:39:35:200 A I am having great difficulty here because
14:39:39:300 I don't see FMSI mentioned any place in this
14:39:43:400 letter. Is this something you got from the FMSI
14:39:45:500 files too? It says FMSI?

14:39:46:600 Q Yes, sir.

14:39:48:700 A I don't recognize it again.

14:39:50:800 Q Okay. Well I am just asking you: Do you
14:39:52:900 recall any conversations like that occurring among
14:40:01:000 the FMSI members?

14:40:01:100 A We told them to obey the law. Now they
14:40:03:200 themselves interpreted the law the way they wished
14:40:07:300 to interpret it. We suggested that they label all
14:40:11:400 their products, that's the only thing we did. We
14:40:13:500 suggested that. Whether they went along with
14:40:15:600 that, that's something different.

14:40:16:700 MR. DeLUCA: Off the video record,
14:40:18:800 please.

14:40:18:900 MR. PIAZZA: The time is now 2:39,
14:51:32:000 we will take a pause in the testimony of
14:51:32:100 Mr. Drislane.

14:51:32:200 (A short recess was taken.)

14:51:32:300 MR. PIAZZA: Time is now 2:50, we
51:32:400 will resume the testimony of

Mr. Drislane.

BY MR. DeLUCA:

Q Mr. Drislane, let me hand you what I have marked as Exhibit 18, which is the August 17th, 1972 minutes of the meeting of the Asbestos Study Committee. Ask you to take a look at them. The portion that I'm interested in asking you about is displayed on the screen. And let me by way of background ask you if you knew a gentleman from Abex named Feierabend?

A Yes.

Q What was his first name, do you recall?

A Eric, E-R-I-C.

Q Was he a doctor?

A He may have been. I don't think so.

Q And he had attended the various meetings of the FMSI over the years, including this meeting of the Asbestos Study Committee?

A Okay, yes.

Q All right. And at this particular meeting of the Asbestos Study Committee the idea of warning and the idea of caution labels was raised; was it not?

A I believe so. Does it say so in there?

52:50:10 0

Q Yes, sir.

14:52:50:20 0

A Then if it says so in there, yes.

14:52:54:30 0

Q Do you recall as these minutes state

14:53:00:40 0

Mr. Feierabend indicating that the recommendation

14:53:03:50 0

of putting a notification in boxes of brake

14:53:09:60 0

linings would not be warmly accepted by many

14:53:13:70 0

manufacturers?

14:53:15:80 0

A Where is that?

14:53:18:90 0

Q It's on page 3 of the document you have

14:53:24:00 0

but it is here on the screen.

14:53:28:10 0

A Yeah.

14:53:28:20 0

Q Right here, sir.

14:53:31:30 0

A Okay. All right.

14:53:31:40 0

Q Do you know why he thought that the idea

14:53:31:50 0

of putting a caution label in or on a box of

14:53:31:60 0

asbestos brakes would not be warmly accepted by

14:53:41:70 0

manufacturers?

14:53:41:80 0

A Because he felt that other people would

14:53:41:90 0

not be doing it, and he, his company then would

14:53:42:00 0

suffer.

14:53:42:10 0

Q Suffer financially?

14:53:52:20 0

A Yeah.

14:53:52:30 0

Q And Mr. Wagner, you knew him as an

15:53:52:40 0

executive of Carlisle; correct?

54:01:100

A Yes.

14:54:01:200

Q And he was present at the meeting and he objected, did he not, to this recommendation because he thought it would be another red flag that would bring more harm to the industry than the good that would come from it?

14:54:05:300

14:54:07:400

14:54:09:500

14:54:11:600

14:54:13:700

A Is that what it says in the minutes there?

14:54:16:800

14:54:16:900

Q Yes, sir.

14:54:16:100

A Then that's what happened.

14:54:18:100

Q Do you recall those types of discussions occurring?

14:54:20:200

14:54:20:300

14:54:21:400

14:54:21:500

14:54:30:600

14:54:31:700

14:54:31:800

14:54:31:900

14:54:42:000

14:54:42:100

14:54:52:200

14:54:52:300

55:02:400

A There was -- there was a lot of discussion about the fact that do we need this warning on a box with friction materials in it when they -- when that asbestos in the friction materials is actually encapsulated, is one of the words you used before. In other words, do we need it there? Why do we need it? You know, some brake linings and stuff go onto the vehicle without any subsequent machining. So should those products get this label stuck in them? The ones that are going to get additional drilling or chamfering or tapering, okay, they would need it,

55:03:10 0 but people might -- some brake linings sets are
14:55:05:20 0 drilled, chamfered and everything else going out
14:55:07:30 0 of the factory, why do they have to get that
14:55:13:40 0 warning in addition to the people in the factory
14:55:15:50 0 getting the warning?

14:55:16:60 0 Q Well, wouldn't it be correct, sir, that
14:55:18:70 0 when those brakes are put in the box, no one
14:55:20:80 0 really knows how or where or when they are going
14:55:22:90 0 to be used, and that the possibility of additional
14:55:24:00 0 grinding or drilling always existed?

14:55:26:10 0 A No. Basically when they provide them in
14:55:31:20 0 that shape, they are sold with the idea of them
14:55:33:30 0 going on the shoe or the shoe assembly going to
14:55:35:40 0 the customer without any subsequent machining.
14:55:41:50 0 Some linings are like that. They came -- they
14:55:43:60 0 were -- I mean, 1960s when I was with Bendix
14:55:45:70 0 before all this, you sold drilled and chamfered
14:55:51:80 0 and ground segments, period. But when the thing
14:55:53:90 0 went over to rebuilders doing the brakes, then
14:56:00:00 0 people machined them. But if you were coming out
14:56:02:10 0 of a rebuilder's shop and everything is ground and
14:56:04:20 0 drilled and everything else, there wasn't any
14:56:06:30 0 subsequent machining. So there was a question on
56:12:40 0 the part of manufacturers whether they had to put

56:16:100

this notice.

14:56:16:200

Q Don't you think it would have been prudent for them to ere on the side of warning as opposed to selling products with no warning at all?

14:56:18:300

14:56:26:400

14:56:28:500

14:56:28:600

14:56:31:700

14:56:35:800

14:56:37:900

14:56:41:000

14:56:43:100

14:56:45:200

14:56:48:300

14:57:01:400

14:57:04:500

A You have to go back in that time and see what people felt at that particular time. A lot of people did not feel there was any more grinding or called for on these pieces, those products, so why should they give all this information? You have to live in that day. It is so easy to sit here and criticize and backseat drive. But in those days you had to go and -- you weren't going to do all the extra work on the linings if your competition wasn't.

14:57:07:600

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14:57:16:900

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Q So are you telling me that in your view the brake companies, the people who made and sold asbestos brakes really were concerned about what that industry was doing as a whole, and that deviations from what the industry was doing as a whole were not looked upon very favorably?

MR. MENDRZYCKI: Objection.

MR. POLCHINSKI: Objection.

:57:32:400

THE WITNESS: I said exactly what I

57:33:10 0 said before. If you can go and get that
14:57:35:20 0 answer, I would give you the same answer
14:57:37:30 0 again if I could remember it.

14:57:41:40 0 BY MR. DeLUCA:

14:57:41:50 0 Q Do you know what is meant by the term
14:57:43:60 0 "concerted action"?

14:57:45:70 0 A No.

14:57:45:80 0 Q Let me provide you with a definition of
14:57:48:90 0 that. "Concerted action" is the taking of action
14:57:52:10 0 as a group for a common cause.

14:58:00:10 0 A Okay.

14:58:00:20 0 Q All right. Would you agree that the
14:58:00:30 0 brake companies engaged in concerted action to
14:58:00:40 0 delay warnings about the hazards of asbestos?

14:58:11:50 0 (Objection by all at the same time.)

14:58:11:60 0 THE WITNESS: No. Because I think
14:58:13:70 0 they were waiting to find out what they
14:58:15:80 0 didn't know what the danger was at that
14:58:18:90 0 time. This thing didn't develop all of a
14:58:20:00 0 sudden in January 1st, 1971. It
14:58:22:10 0 developed over ten or twelve years there.

14:58:22:20 0 BY MR. DeLUCA:

14:58:22:30 0 Q You are saying these companies didn't
59:00:24 0 know that asbestos was dangerous?

59:03:100

A Absolutely they didn't know it at the beginning of this period.

14:59:11:200

14:59:11:300

Q Here is a letter, sir, dated October 1st, 1935. Okay. This is a letter from Sumner Simpson, do you know him as the president of Raybestos-Manhattan?

14:59:15:400

14:59:18:500

14:59:20:600

14:59:22:700

A I recall that, yes. Yes, but I did not know him.

14:59:26:800

14:59:26:900

Q I understand that, sir. To Vandiver Brown, who was the attorney for Johns-Manville.

14:59:28:1000

14:59:31:100

You see this here, it says, "I think the less said about asbestos the better off we are." Have you ever seen that before?

14:59:31:200

14:59:31:300

14:59:31:400

A Nope. I may have seen it. I just because I know if I say no, you are going to produce the letter sometime, but I don't remember having seen it.

14:59:41:500

14:59:50:1600

14:59:52:1700

14:59:52:1800

Q You subscribed to Asbestos Magazine for many years?

15:00:00:1900

15:00:00:2000

A I did, yes.

15:00:00:2100

15:00:00:2200

Q Okay. Here is a letter from the editor of Asbestos Magazine to Sumner Simpson, and the

15:00:00:2300

date on this letter is September 25th, 1935. And it says, "Always you have requested that for

:00:12:400

00:18:10 certain obvious reasons we publish nothing and
15:00:20:20 naturally your wishes have been respected."
15:00:22:30 Speaking about asbestosis and the hazards of
15:00:26:40 asbestos. Do you see that?

15:00:28:50 A I am having trouble reading it. My eyes
15:00:30:60 aren't good or something, or the type is not
15:00:31:70 satisfactory.

15:00:33:80 Q Well, the letter is 77 years old. It is
15:00:39:90 almost 67 years old?

15:00:41:00 A 67 because it is -- all right.

15:00:43:10 Q Long time ago.

15:00:45:20 A I am having trouble. The second
15:00:46:30 paragraph, you have recasted that. Read it to me,
15:00:48:40 please.

15:00:50:50 Q "Always you have requested that for
15:00:52:60 certain obvious reasons we publish nothing. And
15:00:54:70 naturally your wishes have been respected."

15:01:00:80 A That's what it says there, doesn't it? I
15:01:03:90 never saw it or I don't believe I ever saw it.

15:01:05:00 Q So when you say that these companies
15:01:07:10 didn't know about the hazards, you really have no
15:01:10:20 basis to say that?

15:01:12:30 MR. MENDRZYCKI: Objection.

01:15:40 MR. POLCHINSKI: Objection.

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15:01:15:20 1

15:01:16:30 0

15:01:18:40 0

15:01:20:50 0

15:01:22:60 0

15:01:24:70 0

15:01:26:80 0

15:01:28:90 0

15:01:30:10 0

15:01:31:10 0

15:01:31:20 0

15:01:31:30 0

15:01:41:40 0

15:01:41:50 0

15:01:41:60 0

15:01:50:70 0

15:01:51:80 0

15:02:00:90 0

15:02:00:20 0

15:02:00:21 0

15:02:00:22 0

15:02:11:23 0

:03:11:24 0

THE WITNESS: I don't know what these people knew. I'm me. Those people are them. You are talking of guys -- Bill Simpson from Raybestos or someplace, and some lawyer or something like that.

BY MR. DeLUCA:

Q Bill, did you know Bill?

A No, I did not.

Q Because this guy's name is Sumner Simpson, but he had a son named William. And I was wondering when you said Bill --

A I thought Bill was Sumner. I didn't know that.

Q Okay. All right.

A I don't know what they knew or what they were saying. I have enough God damn trouble remembering what I said.

Q In one of your documents, FMSI documents you state that some have alleged that there has been a cover up of the asbestos hazards?

A Did I say that?

Q It is in an FMSI document.

A It is?

03:13:10 0

Q It is.

15:03:13:20 0

A Can you point it out to me?

15:03:16:30 0

Q Sure. It is a memo you wrote February

15:03:22:40 0

13th, 1975. It's your name there; right?

15:03:26:50 0

A Yes.

15:03:26:60 0

Q Okay. It is an article most critical of

15:03:28:70 0

industry alleging a cover up helped along by some

15:03:30:80 0

scientists, do you remember that?

15:03:31:90 0

A I see it there now. I did write it.

15:03:31:00 0

Okay. I don't remember it, no.

15:03:37:10 0

Q Do you remember any of the details of

15:03:39:20 0

that alleged cover up?

15:03:39:30 0

A No, I do not. Why don't you bring out

15:03:41:40 0

the memo that shows what I did and say, "Did you

15:03:41:50 0

write this?" And I would be happy. But you are

15:03:41:60 0

going to ask all these questions and then prove me

15:03:51:70 0

wrong, and then come back with the correct. Why

15:03:51:80 0

don't you just come with the correct one and let

15:04:01:90 0

me see it?

15:04:02:00 0

Q Sir, I am not trying to embarrass you or

15:04:02:10 0

give you a hard time here. If that's what you

15:04:02:20 0

think I'm doing --

15:04:02:30 0

A You start everything with, what do you

:04:02:40 0

think of this, and what do you think of that, or

04:07:100

something else like that. Then you come and show me the letter later on. Why the hell don't you show me the letter at the beginning?

15:04:09:200

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15:04:15:400

MR. HARKINS: We have been going for over five hours.

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15:04:16:601

THE WITNESS: I mean, this goes on forever.

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15:04:18:800

MR. HARKINS: The hour is getting late. It doesn't seem like we would come close to finishing today. I don't want to impede your interrogation, but if there is a good breaking point, I would respectfully request in view of the witness' age that we terminate as soon as you feel it a good point.

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MR. DeLUCA: Let's go off the video record, please.

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MR. PIAZZA: The time is 3:03, we will take a pause in the testimony of Mr. Drislane.

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MR. DeLUCA: Stay on the written record. In response to what you just said here is what I would propose: I am willing to adjourn the deposition right

15:04:52:200

15:04:54:300

05:00:2:400

05:13:10 0 now to be completed at some later date.
15:05:15:20 0 Next Monday, on the 28th, Judge Gilmore,
15:05:16:30 0 Washington County, is scheduled to hear
15:05:22:40 0 the motion for summary judgment filed by
15:05:26:50 0 the FMSI. I think that my client is
15:05:30:60 0 entitled to complete this deposition
15:05:31:70 0 prior to arguing that motion. And I have
15:05:35:80 0 raised this issue with Mr. Harkins, and I
15:05:39:90 0 will let Mr. Harkins speak for himself,
15:05:41:00 0 but I believe that he is agreeable to
15:05:45:10 0 that.

15:05:45:20 0 We discussed having a conference
15:05:46:30 0 call tomorrow morning where we would
15:05:46:40 0 advise Judge Gilmore that we began the
15:05:50:50 0 deposition, and that for certain reasons
15:05:52:60 0 we were unable to finish it, and that we
15:05:54:70 0 have agreed to do it in the near future,
15:06:00:80 0 and we have agreed to put off argument if
15:06:01:90 0 the court pleases until this deposition
15:06:02:00 0 is done.

15:06:02:10 0 In addition, we discussed the fact
15:06:12:20 0 that I did have a lot of issues that I
15:06:12:30 0 wanted to cover with Mr. Drislane, and
06:12:40 0 some of the attorneys here thought that

perhaps we should schedule two days in which to complete that. I have told Mr. Harkins that I would represent to him that I would agree to only doing one full day of further direct, and assuming it is a full day from ten to five or so, if that would be of assistance to him and his client. And, of course, Mr. Harkins raised the issue we will be able to do a full day given the deponent's health, but I still make that representation to you. I am willing to adjourn this right now subject to what I have said.

MR. HARKINS: I understand and I am in basic agreement with the terms you just outlined.

MR. DeLUCA: Well given that, Mr. Drislane, we are going to adjourn this deposition today. I will be in contact with Mr. Harkins to find a date that's convenient for you. We can hold this deposition at that hotel that you mentioned earlier. Which hotel was that?

THE WITNESS: What's -- what's

07:33:10 0

the -- Desmond. See what I am saying?

15:07:45:20 0

MR. DeLUCA: We will hold it at the

15:07:45:30 0

Desmond, and I thank you for your time

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today.

15:07:45:50 0

(The videotaped deposition of Edward

15:07:45:60 0

W. Drislane in the above-entitled matter

15:07:45:70 0

was adjourned at 3:07 p.m.)

15:07:45:80 0

15:07:45:90 0

(Exhibits 1 - 18, with the exception

15:07:45:10 0

of Exhibit 11 which was never marked, are

15:07:45:10 0

attached to this original deposition, and

15:07:45:20 0

a copy has been produced for each person

15:07:45:30 0

ordering a copy of the transcript by this

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reporter.)

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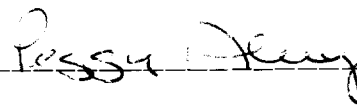
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C E R T I F I C A T I O N

I, PEGGY ALEX, Shorthand Reporter and
Notary Public in and for the State of New York, do
hereby CERTIFY that the foregoing record taken by
me at the time and place noted in the heading
hereof is a true and accurate transcript of the
same, to the best of my ability and belief.



PEGGY ALEX

DATED: October 30, 2002

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