

FILE NAME: Early Asbestos Damage Suits (EADS)

DATE: 1980

DOC#: EADS002

DOCUMENT DESCRIPTION: Deposition of William Brach

IN THE CIRCUIT COURT FOR
KNOX COUNTY, TENNESSEE

1	EARL THOMAS	NO. 3-128-77
	HAROLD WAYNE BLALOCK, ET UX,	NO. 1-365-77
2	JAMES M. BOLINGER, ET UX	NO. 1-462-77
	LOGAN JARRETT CHUNN, ET UX	NO. 2-463-77
3	WILLIAM WALTER CHITTUM, ET UX	NO. 3-494-78
	CECIL ALAN CLARK, ET UX	NO. 2-713-79
4	HAROLD LLOYD COLSTON, ET UX	NO. 1-74-79
	RALPH G. CRIGGER, ET UX	NO. 2-346-78
5	JOE A. WALLACE , ET UX	NO. 3-116-78
	ROBERT WARREN MILLER, ET UX	NO. 1-117-78
6	LAWRENCE EDWARD REDMON, ET UX	NO. 3-117-78
	OSCAR L. WILLIAMS, ET UX	NO. 1-118-78
7	AVERY E. BUCKNER, ET UX	NO. 2-118-78
	FRANK HARRISON, ET UX	NO. 3-118-78
8	ROBERT LEE CLAY, ET UX	NO. 1-119-78
	TOM T. TREADWAY, ET UX	NO. 2-119-78
9	GEORGE DANIEL SMALLWOOD	NO. 3-119-78
	CARL W. REIORDAN, ET UX	NO. 2-120-78
10	ROY G. CAMPBELL, ET UX	NO. 2-151-78
	CONNIE G. BAWGUS, ET UX	NO. 2-152-78
11	DAVID L. BEARD, ET UX	NO. 3-152-78
	CHARLES ALBERT PATRICK, JR., ET UX	NO. 1-153-78
12	EARL H. ERWIN, ET UX	No. 2-153-78
	WILLIAM D. KETCHUM, ET UX	No. 3-153-78
13	JOHN A. GUNTER, ET UX	No. 1-154-78
	LUTHER CLINTON REESE, ET UX	No. 3-154-78
14	CHARLES DAN CATHEY, ET UX	No. 2-115-78
	WALTER EDGAR PATTERSON, ET UX	No. 2-302-78
15	DAVE HICKSON, ET UX	NO. 1-328-78
	GARY LYNN HEADRICK, ET UX	No. 1-330-78
16	ROBERT JERRELL MYERS, ET UX	No. 2-330-78
	KENNETH RUDOLPH HARRISON, ET UX	No. 3-330-78
17	MICHAEL LEE TREADWAY	No. 1-331-78

18 T R A N S C R I P T of the above-entitled matter
19 taken by and before NANCY TARNOWSKI-MISARTI, a Certified
20 Shorthand Reporter and Notary Public of the State of New
21 Jersey at the office of Franklin Swersky, Esquire, 500
Morris Avenue, Springfield, New Jersey, on Monday, December
22, 1980, commencing at 1:00 p.m.

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23 ROSENBERG AND ASSOCIATES
24 Certified Shorthand Reporters
25 769 Northfield Avenue
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(201) 678-5650

1	GEORGE WILLIAM HEADRICK, ET UX	NO. 2-331-78
	JOHN STEWART, ET UX	NO. 3-331-78
2	JERRY LYNN HARRISON, ET UX	NO. 3-332-78
	BENNY DALE TREADWAY, ET UX	NO. 1-333-78
3	RALPH EUGENE KOONTZ, ET UX	NO. 3-333-78
	TIMMONS JOE HEADRICK, ET UX	NO. 1-334-78
4	EVELYN J. REECE, ET VIR	NO. 2-334-78
	THOMAS L. GANN	NO. 3-334-78
5	HAROLD THOMAS WHALEY	NO. 1-335-78
	GARY LYNN COLE, ET UX	NO. 2-335-78
6	BUSTER EDWARD GREER, ET UX	NO. 3-335-78
	VERNON GILBERT WHALEY, ET UX	NO. 1-336-78
7	JAMES E. MCINTURF, ET UX	NO. 2-336-78
	BOB STEPHENS WINSTEAD, ET UX	NO. 3-336-78
8	HAROLD L. TREADWAY, ET UX	NO. 1-337-78
	IVA LOU HAWGUS, ET VIR	NO. 3-337-78
9	ALLEN STARNES, ET UX	NO. 1-338-78
	JAMES THOMAS REEL, ET UX	NO. 2-338-78
10	ONEDA ANN HOLTON, ET VIR	NO. 3-338-78
	MARVIN A. SAYNE, ET UX	NO. 2-339-78
11	WILLIAM DAVID HEADRICK	NO. 1-345-78
	LONNIE L. COLEMAN, ET UX	NO. 2-345-78
12	WILLARD A. DUGGER	NO. 3-345-78
	GEORGE E. LINDSEY, ET UX	NO. 1-346-78
13	LOIS ANN STARNES COLE, ET VIR	NO. 3-346-78
	EMORY R. MILLER, ET UX	NO. 1-347-78
14	BOBBY RAY DUGGER, ET UX	NO. 2-347-78
	CARROLL STARNES, ET UX	NO. 3-347-78
15	IVA LEE LOUDY, Individually and for the benefit of next-of-kin	
16	of Jack Loudy, Deceased	NO. 1-348-78
	CHARLES DAVID NAVE	NO. 2-348-78
17	BARBARA G. STARNES, ET VIR	NO. 3-348-78
	JAMES A. PROFITT, ET UX	NO. 2-349-78
18	JOHN RODNEY STARNES	NO. 3-349-78
19	KAYE MEECE, Individually and for the use and benefit of the next-of-kin	
	of Ruel Meece, deceased	NO. 2-61-79
20	BILL JOPLIN, ET UX	NO. 3-432-79
	JOHN W. ALVIS, ET UX	NO. 1-433-79
21	CHARLES D. ARLOLD, ET UX	NO. 1-540-79
	ROBERTA WOODY, ET VIR	NO. 2-449-79
22	DANNY F. MORRISSETTE, ET UX	NO. 3-549-79
	BEN BELEW	NO. 1-550-79
23	PAUL W. HALL, ET UX	NO. 2-550-79
	THOMAS J. CALBAUGH, JR., ET UX	NO. 3-550-79
24	ARTHUR CLAY COLLINS, ET UX	NO. 3-619-79
	JAMES E. MASON, ET UX	NO. 1-656-79
25	LAWRENCE D. KENNEDY, ET UX	NO. 2-659-79

1	MILLARD J. ROGERS, ET UX	NO. 3-696-79
	SAMUEL DAVID DISNEY, ET UX	NO. 3-73-79
2	RAYMOND D. WEBB, ET UX	NO. 1-714-79
	ISABELLE W. SLUDER, ET VIR	NO. 2-56-80
3	HERSHEL J. GOFORTH, ET UX	NO. 3-77-80
	C. L. MURPHY, ET UX	NO. 1-77-80
4	JACK W. STILES, JR., Single	NO. 1-78-80
	STEDFORD JAMES ISABELL, ET UX	NO. 3-76-80
5	LUCILLE F. HELMECKI, Executrix of	
	the Estate of NARCISSUS A. HELMECKI,	
6	deceased, and Lucille F. Helmecki,	
	individually and for the use and	
7	benefit of the next-of-kin of	
	Narcissus A. Helmecki, deceased	NO. 2-77-80
8	CURTIS G. DREWRY, ET UX	NO. 2-200-80
	WILLIAM E. BRANDON, ET UX	NO. 1-387-80
9	CHARLES D. BROWDER, ET UX	NO. 2-387-80
	R. L. MCKINNEY, ET UX	NO. 2-74-79
10	LEWIS ROSS SCHLICHER, ET UX	NO. 3-436-80
	LENA W. EARLS, ET VIR, WALLIE EARLS	NO. 2-425-80
11	WALLACE CEATHER VAUGHN, ET UX	NO. 1-595-80
	ISAAC HARRIS, ET UX	NO. 2-609-80
12	WILLIAM EDGAR BLUE, ET UX	NO. 1-632-80
	BYRON LOUIS STANDIFER, ET UX	NO. 3-631-80
13	ROBERT F. SOLOMON, ET UX	NO. 3-640-80
	CHARLES LEE WRIGHT, ET UX	NO. 2-369-80
14	RICHARD GILLIAM, ET UX	NO. 1-683-80
	JAMES W. TIPTON, ET UX	NO. 3-682-80

15
16 Plaintiffs,

17 vs.

18 JOHNS-MANVILLE SALES CORPORATION,
19 et al,

20 Defendants.
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

ARTHUR R. MELTON, ET UX, : NO. 3-80-361
RICHARD HARKLEROAD, ET UX, : NO. 3-80-490
EMANUEL G. LAWSON, ET UX, : NO. 3-80-491
CHARLES E. MURPHY, ET UX, : NO. 3-80-466

Plaintiffs

vs.

JOHNS-MANVILLE SALES
CORPORATION, ET AL,

Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ELMER B. PUGH, ET UX, : NO. 79-3510
ESMOND H. HARDING, : NO. 80-3050

Plaintiffs,

vs.

JOHNS-MANVILLE SALES
CORPORATION, ET AL,

Defendants.

IN THE CIRCUIT COURT FOR
DAVIDSON COUNTY, TENNESSEE

1	FLOYD ALEXANDER ERWIN, ET UX	NO. C-3533
2	CHARLES D. MACKIE, ET UX	NO. C-3534
	JOSEPH L. DAVIS, ET UX	NO. C-3535
3	MILTON BOYD, ET UX	NO. C-3536
	ROBERT L. BULLOCK, ET UX	NO. C-3537
4	ELMER LEE CATHEY, ET UX	NO. C-3538
	JAMES V. MACKIE, ET UX	NO. C-3539
5	DON EDWARD CHILDRESS, ET UX	NO. C-3540
	HORACE K. OLIVER, ET UX	NO. C-3541
6	ROBERT WESLEY OVERTON, ET UX	NO. C-3542
	CLAUDE E. MURPHY, ET UX	NO. C-3543
7	WILLIAM D. FERRELL, ET UX	NO. C-3563
	ROBERT D. JENNETTE, ET UX	NO. C-3564
8	WILLIAM MORTON ADKISSON, ET UX	NO. C-3565
	GRANVILLE CHILDRESS, ET UX	NO. C-3566
9	WILLIAM TRAVIS RING, ET UX	NO. C-3567
	JAMES W. SMITH, ET UX	NO. C-3568
10	SILAS E. CHILDRESS, ET UX	NO. C-3569
	THOMAS F. HOOVER, ET UX	NO. C-3570
11	CLYDE E. HARRIS, ET UX	NO. C-3571
	ROBERT E. DAVIS	NO. C-3572
12	BILLY D. KEMP	NO. C-3573
	JERRY WAYNE CANTRELL, ET UX	NO. C-3574
13	LIVELY E. NEELY, ET UX	NO. C-3575
	WILLIAM M. CHUNN, ET UX	NO. C-3576
14	CLARENCE MILTON TAYLOR, ET UX	NO. C-5991
	RUBEN C. BILLINGTON, ET UX	NO. C-6234
15	ROBERT W. BILLINGTON, ET UX	NO. C-6235
	WILLIAM ALBERT HARPER, JR., ET UX	NO. C-6236
16	HERMAN S. RING, ET UX	NO. C-6237
	GENE M. TAYLOR, ET UX	NO. C-6238
17	THOMAS E. ERWIN	NO. C-6278
	FRANK J. WARD, ET UX	NO. C-6279
18	RICHARD A. STEPHENSON, ET UX	NO. C-6281
	JAMES W. ADKISSON, ET UX	NO. C-6282
19	WILLIAM ROBERT WALL, ET UX	NO. C-6283
	WILLIAM W. ERWIN, ET UX	NO. C-6284
20	DANNY WILBURN BERLIN, ET UX	NO. C-6285
	DONALD O. CUNDIFF, ET UX	NO. C-6286
21	WILLIAM T. GOOCH, ET UX	NO. C-6287
	MILDRED RIMLINGER, Individually and	
22	for the benefit of next-of-kin of	
	Charles Harlan Rimlinger, Deceased	NO. C-6340
23	JESSIE L. CARROLL, Individually and	
	for the benefit of next-of-kin of	
24	J. C. Carroll, Deceased	NO. C-6341
25	LOUIS CHARLES WINKLER FRANK, ET UX	NO. C-6342

1 A P P E A R A N C E S:

2 MESSRS. GILLENWATER, WHELCHER & ROBERTS
3 BY: PAUL T. GILLENWATER, ESQUIRE
Attorney for Plaintiffs.

4 MESSRS. DWYER, CONNELL & LISBONA,
5 BY: DENNIS F. CAREY III, ESQUIRE
Attorney for Unarco Industries

6 MESSRS. MORGAN, MELHUISE, MONAGHAN, & SPIELVOGEL
7 BY: NAN BERNARDO, ESQUIRE
Attorney for Raybestos Manhattan

8 MESSRS. HASKINS, ROBOTOM, HACK, PIRO & O'DAY
9 BY: SUSAN M. CLAPP, ESQUIRE
Attorney for Combustion Engineering

10 MESSRS. BUDD, LARNER, KENT, GROSS, PICILLO &
11 ROSENBAUM
BY: DAVID J. NOVACK, ESQUIRE
12 Attorney for Johns-Manville

13 MESSRS. HODGES, DOUGHTY & CARSON
14 BY: WILLIAM ALLEY, ESQUIRE
Attorney for Owens, Corning Fiberglas, Keene
15 Corp., Eagle-Picher, Forty-eight
Insulation Co., Armstrong World Indus-
16 tries, and for all other Defendants
other than Johns-Manville, Raybestos
17 Manhattan, Unarco Industries and
Combustion Engineering.

18

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I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RED.</u>	<u>REC.</u>
1					
2	William L. Brach				
	By: Paul T. Gillenwater	8			
3	David J. Novack		24		
4					
5					
6	<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>EVID.</u>	
7	B-1	Complaint and Demand for			
8		Jury Trial	8		
9	B-2	Summons	8		
10	B-3	Answer	8		
11	B-4	Interrogatories	8		
12	B-5	Order	8		
13	B-6	Answers to Interrogatories	8		
14	B-7	Interrogatories	8		
15	B-8	Answers to Interrogatories	8		
16	B-9	Order	8		
17	B-10	Order of Dismissal	8		
18	B-11	Stipulation and Order	8		
19	B-12	Order Civil No. 741-57	26		
20	B-13	Summary Judgement Civil No. 741-57	27		
21	B-14	Order Civil No. 741-57	27		
22					
23					
24					
25					

1 MR. GILLENWATER: The deposition of Mr. William
2 L. Brach is taken pursuant to Notice in the cases
3 that are captioned. It is agreed and stipulated by
4 and between Counsel for the respective parties that
5 all objections except objections as to form of the
6 question are reserved.

7 (Complaint and Demand for Jury Trial re:
8 Frederick LeGrande marked B-1 for Identification;
9 Summons marked B-2 for Identification; Answer marked
10 B-3 for Identification; Interrogatories marked B-4
11 for Identification; Order marked B-5 for Identification;
12 Answers to Interrogatories marked B-6 for Identifica-
13 tion; Interrogatories marked B-7 for Identification;
14 Answers to Interrogatories marked B-8 for Identifica-
15 tion; Order marked B-9 for Identification; Order
16 of Dismissal marked B-10 for Identification; Stipu-
17 lation and Order marked B-11 for Identification,)

18
19 W I L L I A M L. B R A C H, Esquire, 33 Evergreen Place,
20 East Orange, New Jersey, Duly Sworn

21 DIRECT EXAMINATION BY

22 MR. GILLENWATER:

23 Q Would you please state your full name, your
24 age, and your place of residence.

25 A My name is William L. Brach, B-r-a-c-h. My age is

Brach - direct

1 fifty five, and my residence is in the town of Montclair.

2 Q The Town of Montclair?

3 A New Jersey.

4 Q Mr. Brach, what is your profession?

5 A Attorney.

6 Q How long have you been an attorney, Mr. Brach?

7 A Since 1950, thirty years.

8 Q Are you licensed to practice law in the State
9 of New Jersey?

10 A Yes, I am.

11 Q How long have you been so licensed?

12 A Thirty years.

13 Q Are you a member of a firm actively engaged
14 in the practice of law at this time, sir?

15 A Yes, I am.

16 Q What is the name of your firm?

17 A Brach, Eichler, Rosenberg, Silver, Bernstein &
18 Hammer.

19 Q Where are they located?

20 A At 33 Evergreen Place in East Orange, New Jersey.

21 Q Mr. Brach, after commencing in the practice
22 of law in 1950 at some point in time did you have occasion
23 to represent a man named Frederick LeGrande?

24 A Yes, I did.

25 Q Would you please tell us when your first

1 contact was with Mr. LeGrande, if you know, or the circum-
2 stances about which you undertook his representation.

3 A I may be somewhat imprecise in giving the exact
4 date, but it was to my recollection approximately 1956 or
5 1957. I represented him both in terms of a claim, workmen's
6 compensation claim against his employer, H. W. Porter &
7 Company, and also in a third-party action against Johns-
8 Manville Products Corporation.

9 Q What claim was it, Mr. Brach, against H. W.
10 Porter Company and Johns-Manville? What did it involve?

11 MR. NOVACK: Objection to the form of the
12 question.

13 Q What did the claim against those two companies
14 involve?

15 A Well, breaking it down, the claim against H. W.
16 Porter is in terms of Workmen's Compensation claim for
17 occupational disease, which he had contracted known as
18 asbestosis; and the claim against Johns-Manville was a
19 third-party action framed in negligence and originally also
20 in terms of breach of warranty.

21 Q Mr. Brach, when you undertook the representa-
22 tion of Mr. LeGrande, did you determine what sort of work
23 it was that Mr. LeGrande had been involved in?

24 A Yes.

25 Q What kind of work was it, sir?

1 A Mr. LeGrande was what is called a mechanic in the
2 field of working with asbestos products in the application
3 of asbestos products in construction work. He was hired
4 through the Union and sent to various jobs which construc-
5 tion was undertaken, particularly types of things such as
6 hospitals, and his job specifically was the application of
7 insulated material to heating, refrigerating, refrigeration
8 equipment.

9 Q In your investigation concerning your repre-
10 sentation of Mr. LeGrande, did you determine what sort of
11 materials it was that Mr. LeGrande worked with?

12 A Yes.

13 Q Did you determine what minerals or what parts
14 were contained or what those products contained that he
15 worked with?

16 A Yes.

17 Q Did you determine whether or not Mr. LeGrande
18 had been exposed to any materials containing asbestos?

19 A Yes. That was the substance of the complaint in
20 both the origin of the occupational disease, and also in
21 terms of the third-party complaint against Johns-Manville.

22 Q You mentioned the word "asbestosis." What
23 sort of disease was it that Mr. LeGrande had?

24 MR. NOVACK: Objection to the form of the
25 question.

Brach - direct

1 Q What type of disease did Mr. LeGrande have?

2 A Well, it was diagnosed ultimately as asbestosis by
3 the attending physician and other physicians with who
4 examined him.

5 Q Did you determine whether or not the asbestosis
6 that Mr. LeGrande had was a result of his exposure to the
7 insulation products that he worked with?

8 MR. NOVACK: Objection to the form of the
9 question.

10 A It was the position of Mr. LeGrande as Plaintiff,
11 and myself as Counsel, that there was a causal relationship,
12 and which we were in the position to prove by relation --
13 by with expert testimony in terms of the physicians who
14 were in attendance who had conducted certain tests and
15 examination.

16 Q You mentioned a moment ago that the represen-
17 tation by you of Mr. LeGrande involved a third-party suit
18 against Johns-Manville Products Corporation. Did you file
19 lawsuit on behalf of Mr. LeGrande against Johns-Manville
20 Products Corporation?

21 A Yes, I did.

22 Q I hand you a document which has been marked
23 Exhibit B-1, and ask you if you recognize that as being a
24 copy of the original Complaint that you on behalf of Mr.
25 LeGrande filed against Johns-Manville Products Corporation?

1 A Yes, I do recognize it, and particularly recognize
2 my signature on the third page as well as recollecting the
3 substance of the complaint.

4 MR. GILLENWATER: I will ask that that docu-
5 ment be introduced as Exhibit No. B-1 to Mr. Brach's
6 testimony.

7 Q Mr. Brach, when you filed this lawsuit I ask
8 you whether or not a summons was issued by the United States
9 District Court for the District of New Jersey to Johns-
10 Manville Products Corporation, and hand you a document and
11 ask you if you recognize that?

12 A Yes. This summons bears the pertinent information,
13 and we did issue a summons in concurrence with the Complaint.

14 Q Mr. Brach, I ask you to look down at the
15 bottom left-hand corner of that document, and tell us the
16 date that the summons was issued in connection with the
17 lawsuit that you filed on Mr. LeGrande's behalf against
18 Johns-Manville.

19 A July 17, 1957.

20 Q Was that the date that the Complaint was
21 filed that we've just introduced as Exhibit B-1?

22 A I would assume that they were approximately the
23 same date or approximately the same time. I have no speci-
24 fic recollection of that particular day in 1957 as the date
25 of the Complaint, but the ordinary practice in our practice

1 would have been to file a Complaint and Summons concurrently.

2 Q If you would, please, sir, and if you need
3 to, look at Exhibit B-1 and tell the members of the Jury
4 what the basis was in the Complaint for the complaint
5 against Johns-Manville?

6 A Well, the primary basis of the Complaint was that
7 the Plaintiff, Mr. LeGrande, had contracted a disease known
8 as asbestosis; and after he had been to see his physician
9 and had also been to see other physicians who were expert
10 in lung and heart conditions, and had certain tests made,
11 that he was convinced, and I as Counsel was convinced that
12 the disease was caused by asbestos particles having been
13 assimilated over a period of time, and that in turn was the
14 result of his work that he was engaged for approximately
15 thirty years, that our complaint was premised in the fact
16 that he was dealing with a product in his daily work which
17 would expose him to asbestos particles, and that would
18 create a serious risk that he or others like him might con-
19 tract asbestosis as a disease which, in fact, was what
20 happened to Mr. LeGrande, that he had no awareness of this,
21 being an average workman of no particular education in the
22 field as to what the risks were, and he handled this as a
23 mechanic and an applicator, that there was no warnings given
24 to him, that he wasn't given any particular training as to
25 what kind of protections he might want to use; and we stated

1 in our Complaint that as a result of the failure to do
2 these things by the manufacturer, in this case Johns-Man-
3 ville, that he was exposed to this risk, and the risk did
4 result in his contracting the disease.

5 Q As a result of your filing of this Complaint,
6 did Johns-Manville through its attorney file an Answer
7 to the Complaint? Let me hand you a document that is marked
8 Exhibit B-3.

9 A Yes. To my recollection this is in fact the Answer
10 that was filed in response to the Complaint.

11 MR. GILLENWATER: I don't know whether I
12 asked that Exhibit B-2 be introduced in evidence.
13 If I didn't, I now at this time ask that B-2 be
14 admitted into evidence.

15 Q Do you have in front of you a current copy of
16 the Answer that Johns-Manville filed to the Complaint?

17 A The document B-3 is to my recollection a correct
18 copy of the Answer that Johns-Manville filed in response to
19 the Complaint.

20 MR. GILLENWATER: I ask that that document
21 be marked in evidence as Exhibit B-3.

22 Q Mr. Brach, as time passed and after you filed
23 the lawsuit, did you on behalf of Mr. LeGrande file what
24 are known as Interrogatories to Johns-Manville Corporation?

25 A Yes, I did.

1 Q I show you a document that's marked Exhibit
2 B-4, and ask you if that is a copy of the Interrogatories
3 that you submitted on behalf of Mr. LeGrande to Johns-
4 Manville Corporation?

5 A Yes. I have looked through B-4, and I do note my
6 signature again at the very end of it, and I do recollect
7 we served Interrogatories, and this appears to me to be a
8 true copy of the Interrogatories that we served at that
9 time.

10 MR. GILLENWATER: I ask that that document
11 be introduced into evidence.

12 Q Mr. Brach, under the rules in New Jersey at
13 the time that these Interrogatories were submitted, could
14 you tell the members of the Jury first what Interrogatories
15 are, and what the import of the Interrogatories are under
16 the Rules that exist in existence at that time. What it
17 required the Defendant, Johns-Manville to do when it re-
18 ceived these Interrogatories.

19 MR. NOVACK: I am going to object to the form
20 of this question. I don't see how this witness has
21 been qualified, and I am certainly not contesting
22 his qualifications, but I don't know that he's here
23 as an expert testifying to the significance of the
24 Federal Court Rules in New Jersey in 1957.

25 A Well, I was admitted to practice before the Federal

1 District Court in 1957, and I did have occasion to use dis-
2 covery procedures in my profession; and, one of the types
3 of discovery procedures was Interrogatories.

4 Interrogatories in the case of Frederick LeGrande
5 were of particular importance, because Mr. LeGrande himself
6 being a workman would have no opportunity or reason to be
7 aware of certain facts that were very relevant and important
8 to his case, that would be in the possession of Johns-Man-
9 ville.

10 The Interrogatory procedure, which is permitted by
11 the Court Rules, enables us to ask questions that would
12 produce either evidence that would be relevant or facts
13 that might lead to evidence that would be relevant to the
14 issues in the case, and we consequently as his attorney
15 designed this set of Interrogatories that you have provided
16 and is marked as B-4 in order to illicit from Johns-Man-
17 ville in particular facts that they would know about and be
18 aware of, and that we as the Plaintiff would have no other
19 way of knowing about unless we had a procedure of this type.

20 Is that in essence the question that you asked?

21 Q Yes, sir and the answer.

22 Did Johns-Manville file Answers to the
23 Interrogatories or did you have to take steps to cause
24 them to file answers to the Interrogatories?

25 A I recall there was some delay in time, and that

1 ultimately we followed another procedure that is outlined
2 in the rules, in which we had to make a motion; that is,
3 an application before the Judge, and ask that either they
4 be required to provide the answers that were asked of them
5 on Interrogatories, or that their defenses be stricken, and
6 in the words of the Court a default be entered against
7 them, and this did result in an Order from the Court direct-
8 ing that answers be provided.

9 There was, of course, some motion in which there
10 were objections made by Johns-Manville, and certain rulings
11 by the Court, in which some of the Interrogatories that we
12 were asking were, were themselves stricken, and the Defendant
13 was not required to answer those by Order of the Court.

14 Q I hand you a document that has been marked
15 Exhibit B-5 and ask you if that's an Order concerning your
16 motion to require Johns-Manville to answer the Interroga-
17 tories that you've talked about?

18 A Yes, that's correct.

19 MR. GILLENWATER: I ask that Exhibit No. B-5
20 be admitted in evidence.

21 Q After that Order went down, Mr. Brach, did
22 Johns-Manville file answers to those parts of the Interroga-
23 tories that you submitted that the Court required them to
24 answer?

25 A Yes, they did.

1 Q I hand you a document marked Exhibit No. B-6
2 and ask you if that is a copy of the answers that Johns-
3 Manville filed to the Interrogatories?

4 A It also has some answers to Supplemental Interroga-
5 tories attached to this document you've handed me, and my
6 recollection is that these are, in fact, copies of the
7 answers in response to the Interrogatories that were served
8 on Johns-Manville.

9 MR. GILLENWATER: I offer that as the next
10 Exhibit in evidence, please.

11 Q Did Johns-Manville submit written Interroga-
12 tories to Mr. LeGrande?

13 A Yes.

14 Q I'll show you a document marked Exhibit B-7
15 and as if these are the written Interrogatories or questions
16 that Johns-Manville submitted to Mr. LeGrande for him to
17 answer?

18 A Again, this is to the best of my recollection is a
19 copy of the Interrogatories that were submitted to us by
20 Johns-Manville for Mr. LeGrande to answer.

21 MR. GILLENWATER: I offer Exhibit B-7 in
22 evidence.

23 Q Did Mr. LeGrande answer the Interrogatories
24 that Johns-Manville submitted to him?

25 A Yes.

1 Q I hand you a document marked Exhibit B-8 and
2 ask you if that is a true and correct copy of the Answers
3 to the Interrogatories made by Mr. LeGrande?

4 A These Answers were prepared with the assistance of
5 our office who helped, of course, collecting the necessary
6 information, and were reviewed by Mr. LeGrande, and he did
7 in fact submit these under his signature as answers to the
8 Interrogatories prepared by, promulgated by Johns-Manville.

9 Q Was it required by the Federal Rules in
10 existence at the time, 1957., that the Answers to Interroga-
11 tories be under oath, sworn to?

12 A My recollection is yes, at that time it was required,
13 and I think there was a --

14 Q And, with reference to the Answers to the
15 Interrogatories that Johns-Manville filed, were those answers
16 under oath?

17 A I believe they were.

18 Q Were the answers that Mr. LeGrande provided
19 to the questions that Johns-Manville asked likewise under
20 oath?

21 A Yes.

22 Q Was it the practice in the Federal Court in
23 New Jersey that a pre-trial conference be had in connection
24 with lawsuits that were filed and pending in that Court
25 back in 1957, 58?

1 A Yes.

2 Q Was a pre-trial conference had in connection
3 with the LeGrande case?

4 A Yes.

5 Q Would you briefly tell the members of the Jury
6 what a pre-trial conference is, what it was at that time,
7 what it consisted of?

8 A Well, a pre-trial conference was a conference between
9 the Judge and the lawyers representing each of the parties
10 in which, according to an established procedure set forth
11 by the District Court and the rules, the ground rules for
12 the trial were set forth, and the issues were reviewed, and
13 they were set forth so everybody would know exactly what the
14 factual issues were to be and the legal issues, what the
15 number of expert witnesses that might appear, when trial
16 briefs would be filed, that kind of arrangements would be
17 made at the pre-trial in order to set down the order of
18 events in enabling the trial to proceed as expeditiously
19 as possible.

20 Q I had you a document that's marked Exhibit
21 B-9, and ask you if you recognize this as being a copy of
22 the Order of the U. S. Federal District Judge in New Jersey
23 dated October 17, 1958, concerning the pre-trial conference
24 that was had?

25 A Again, this appears to be the pre-trial was held

1 and in accordance with the Court Rules.

2 MR. GILLENWATER: I ask that Exhibit B-9
3 be admitted in evidence.

4 Q Would you tell us what happened to the lawsuit,
5 how it progressed after the pre-trial hearing was had, what
6 your recollection is about the events that transpired from
7 that point forward.

8 A I will give you my best recollection on that.

9 Q All right, sir.

10 A There may have been some further motion on the ques-
11 tion of supplemental interrogatories, I'm not quite certain,
12 but I believe there was, that we did in fact appear on the
13 day called for trial. There was a settlement reached. My
14 recollection, I could be possibly wrong on it, was that on
15 the initial day there was, the jury was drawn and that there
16 were some settlement discussions either late in that day
17 or early the next day, and that we never actually went to
18 trial, but that the matters in difference were resolved in
19 a settlement between my client, Mr. LeGrande, and Johns-
20 Manville.

21 Q I hand you a document marked Exhibit B-10,
22 and ask you if you recognize that, sir.

23 A Yes, that appears to be the Order of Dismissal in
24 appropriate form which resulted from the settlement agree-
25 ment.

1 MR. GILLENWATER: I offer Exhibit No. B-10
2 in evidence.

3 Q Lastly, I show you a document marked Exhibit
4 B-11, and ask you if you recognize that?

5 A Yes, Again, this appears to be the final step in
6 completing the arrangements that resulted in the settlement
7 of the dismissal in the case.

8 MR. GILLENWATER: I offer Exhibit B-11 in
9 evidence.

10 Q Mr. Brach, before the case came on for trial,
11 do you recall whether or not Johns-Manville had Mr. LeGrande
12 examined by any of their doctors?

13 MR. NOVACK: Objection to the form of the
14 question.

15 A I have no specific recollection. I would think it
16 was so. I would think that they would in fact have had
17 him examined prior to trial.

18 Q What was the amount that Johns-Manville
19 paid in settlement of the LeGrande case in April of 1959?

20 MR. NOVACK: Objection to the question.

21 A The settlement was in the amount of \$35,000 including
22 an agreement that there would be no attempt to recover or
23 place a lien on any of the Workmen's Compensation Award.

24 MR. GILLENWATER: You, gentlemen and ladies
25 or ladies and gentlemen may inquire.

1 MR. ALLEY: I have no questions.

2 MS. BERNARDO: I have no questions.

3 MR. CAREY: I have no questions.

4 MR. NOVACK: I have a couple of questions,
5 if you just want to give me a couple of minutes.

6 (Off record discussion.)

7

8 CROSS-EXAMINATION BY

9 MR. NOVACK:

10 Q Mr. Brach, my name is Dave Novack. I repre-
11 sent Johns-Manville in this lawsuit, and I'd just like to
12 ask you a few questions.

13 We've marked a number of documents this
14 morning that have submitted by Mr. Gillenwater. Are those
15 documents from your file?

16 A No.

17 Q During the time that you prosecuted this
18 matter, did you maintain a file regarding Mr. LeGrande?

19 A Yes, I did.

20 Q But you don't have that file here today?

21 A I have been unable to locate the file. I made a
22 conscious search for it, and I have not been able to locate
23 it.

24 Q So that your identification of the documents
25 this morning is based upon your recollection of what was in

1 the file, is that right?

2 A My recollection of what was in the file, my identi-
3 fication of my own signature on a good number of the docu-
4 ments.

5 Q But with regard to the documents upon which
6 your signature did not appear, you are just basing your
7 identification on what you recall to be in the file, is
8 that right?

9 A What I recall to be the nature of the documents and
10 the substance of them as I reviewed the documents handed
11 to me, yes, sir.

12 Q All of these documents are in fact over twenty
13 years old, isn't that so?

14 A That's right.

15 Q There was some testimony by yourself this
16 morning concerning the Answers to Interrogatories provided
17 by Johns-Manville. In fact, Interrogatories propounded by
18 you upon the Defendant. Prior to your receiving of those
19 Answers you had discussed a motion to strike some of these
20 Interrogatories, isn't that correct?

21 A Let me see if I can get the tenor of your question.
22 There was a motion to strike by the Defendant in this
23 action, which resulted in an appearance before Judge
24 Wortendyke, and a determination by him that certain ques-
25 tions that were objected to should need not be answered,

1 and certain questions that were objected to should be answered,
2 and he made rulings on a number of such questions, some
3 favorable to our position, some not favorable to our posi-
4 tion.

5 Q Isn't it a fact that over a third of the
6 questions were found to be improper and were stricken?

7 A Well, I think the Judge's Order would speak for
8 itself. I didn't make a count or a tabulation of it.
9 There were some questions which he determined were not in
10 his judgement relevant, and some questions which he felt
11 should be answered.

12 Q Mr. Brach, I'd like to show you a document
13 which for lack of marking I would offer as DB-1 for identi-
14 fication, and ask you if you can identify it.

15 MR. GILLENWATER: Excuse me, why don't we
16 make it B-12 and keep them in order.

17 MR. NOVACK: That's satisfactory.

18 A Yes, this is again it appears to me in my best
19 recollection to be the consequence of the motion to hearing
20 and the Judge's determination embodied in this document as
21 the Order.

22 MR. NOVACK: Thank you. May we go off the
23 record for a moment, please.

24 (Off record discussion.)

25 (Order Civil No. 741-57 marked B-12 for

1 Identification; notice for motion for summary
2 judgement Civil No. 741-57 marked B-13 for
3 Identification; Order Civil No. 741-57 marked B-14
4 for Identification.)

5 Q Mr. Brach, during the course of the prosecu-
6 tion of this case, do you recall that there was a motion
7 filed on behalf of the Defendant for summary judgement?

8 A Yes, I think there was.

9 Q I would like to show you a document which
10 has been marked B-13 for identification, and ask you if
11 that is a copy to the best of your recollection of that
12 motion?

13 A This appears to be a copy of that motion, yes.

14 Q In due course, did you come before Judge
15 Wortendyke for argument on that motion?

16 A Yes.

17 Q And was in fact the motion granted as to
18 Count II of the Complaint?

19 A It was denied as to Count I, and granted as to
20 Count II.

21 Q And so the second count of the Plaintiff's
22 Complaint was in fact dismissed?

23 A The negligence count was the -- it was denied. It
24 went on to trial. That was the one I described at the
25 outset.

1 Q Mr. Brach, please answer the question.

2 A I am answering the question. And the second count
3 which dealt with warranty, the Judge granted the summary
4 motion of dismissal.

5 Q And does this document which has been marked
6 B-14 for identification appear to you to be a copy of the
7 Order which you discussed?

8 A It refers to both aspects of the motion, and the
9 disposition of both aspects of the motion.

10 MR. NOVACK: I would at this point move that
11 B-12, B-13, and B-14 be entered into evidence, and
12 I have no further questions of the witness.

13 MR. GILLENWATER: It is agreed at the con-
14 clusion of the deposition of Mr. Brach, it is
15 agreed and stipulated by and between the parties
16 that I be permitted to take the videotape of the
17 deposition of Mr. Brach into my possession, and
18 return it to Knoxville for use in the cases as
19 they're called.

20 It is further agreed and stipulated that
21 the videotape operator will break the seal on the
22 videotape, and as I understand by doing that you
23 can't tape over it or change it, is that correct?

24 MR. ANTANUCIO: Not one hundred percent
25 correct, but I will just clarify it for you.

1 Basically, if you put it in you won't accidentally.
2 Purposely you could.

3 (Whereupon proceedings were adjourned at
4 11:20 a.m.)

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3 C E R T I F I C A T E
4

5 I, **NANCY TARNOWSKI-MISARTI, C.S.R., R.P.R.**

6 a Notary Public and Shorthand Reporter of the
7 State of New Jersey, do hereby certify that
8 prior to the commencement of the examination

9 **William L. Brach**

10 was duly sworn by me to testify the truth, the
11 whole truth and nothing but the truth.

12 I DO FURTHER CERTIFY that the foregoing
13 is a true and accurate transcript of the testimony
14 as taken stenographically by and before me at the
15 time, place and on the date hereinbefore set forth,
16 to the best of my ability.

17 I DO FURTHER CERTIFY that I am neither
18 a relative nor employee nor attorney nor counsel
19 of any of the parties to this action, and that I
20 am neither a relative nor employee of such attorney
21 or counsel, and that I am not financially interested
22 in the action.

23 Nancy Tarnowski-Misarti
24 Notary Public of the State of New Jersey
25