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J O H N J H I G G I N S, 24 Hook Mountain Drive, Anandale, New Jersey, sworn.

DIRECT EXAMINATION BY MR. PLACITELLA:

THE VIDEOGRAPHER: Good morning. The is the videotaped deposition of John Higgins in the matter of Chavan versus 3M Company, et al, docket number MID--L-1628-09. This deposition is being held at 200 Atrium Drive, Someset, New Jersey on June 15, 2011 my Charles Papa. I'm from the firm of Magna Legal Services.. I'll be the videographer. We are out of Philadelphia, Pennsylvania.

We are going on the record at 9:45. Appearance will be noted in the video record record. The court reporter will now swear in the witness.

Q. Good morning, Mr. Higgins, how are you?

A. Fine. How about you?

Q. Good. We are here for the purpose of taking your deposition today. Have you ever had your deposition taken before?

A. Yes.

Q. How many occasions?
A. Oh, gosh, half a dozen. Some number like that. Mostly in labor disputes in front of a smaller audience, I have to admit.
Q. So you are familiar with the rules? I don't need to go over them?
A. Correct.
(P-1 is marked for Identification)
Q. I'm going to show you what's been marked P-1 for Identification ,which is the Deposition Notice for today. Have you seen that before?
A. Yes, I have.
Q. You are the person being produced by Merck as the person most knowledgeable about the use of asbestos at the Rahway plant. Is that correct?
A. That's correct.
Q. What qualifies you to be that person?
A. I started working with Merck at Rahway in 1970 through 1981 first in technical services as a chemical engineer. Later in various manufacturing roles.
I also participated as sort of the tour guide when the Selikoff folks from Mt. Sinai came into Rahway to look at asbestosis cases in about 1972 or '73.

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So between the manufacturing experience and the experience with the Selikoff folks I feel like I'm qualified to talk about the usage of asbestos, at least in general terms, at the Rahway site.

Q. Now, the Deposition Notice asks that you produce various documents with you. Did you look at that notice for the documents?

A. I did. Pardon me. I also looked at the Defendant Merck response to the first notice in and a prior notice, excuse me, another notice relative to various documents in this site.

Q. Did you bring the documents called for in the notice with you today?

A. No. I believe most of those documents, according to the answers from Mr. Seaver, are not are not available.

Q. Can you tell me going through the list 1 through 21, which documents are available to your knowledge, rather read each one?

MR. SEAVER: You are asking him to review. There's been a written response to the document production. The documents were produced to your office. We are now going to do an exercise to have him go through it again?

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Q. Did you make an independent search for the documents called for?

A. No. I didn't.

MR. SEAVER: Just for the record, counsel, Mr. Higgins is retired from Merck. He is not currently employed there, in terms of current access to the documents.

Q. Do you have any access to the documents called for in this?

A. At this time I do not. I retired about a year ago.

Q. Were you provided with any documents in preparation for your deposition today?

A. I was provided with some historical documents from the '70s at Rahway, including a deposition from Jack Snyder, who formerly headed safety.

Q. Do you have those with you today?

A. Yes, I do.

Q. Can we mark that group as P-2, please?

MR. SEAVER: I'm removing correspondence with counsel.

MR. PLACITELLA: No problem.

(The above documents are marked P-2 for Identification)

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MR. SEAVER: Chris, I have no objection to your asking the witness what he knows about document retention.

MR. PLACITELLA: I'll get to that.

MR. SEAVER: I wanted to clarify that on the record. He is not there anymore.

Q. You graduated from Steven's Institute in 1970, correct?

A. That's correct.

Q. With a degree in chemical engineering?

A. That's correct.

Q. And you started at Steven's in 1966. Is that correct?

A. That's also correct.

Q. And your first job out of college was at Merck?

A. Yes. About a month after school let out I got done with my dipploma, I started at Merck.

Q. When you took your undergradte education at Steven's, did you have any safety training in the handling of toxic chemicals?

A. No. It was more related to things like reactor design, distillation practice. Those kind of theoretical things.

Q. Have you had ever taken any formal courses

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on asbestos use or asbestos dangers?

A. Only the sort of internal Merck talks, lectures, materials related to asbestos handling practices.

Q. So nothing other than what Merck itself ran?

A. Correct.

Q. When was the first such course run by Merck that you attended?

A. You are taxing my memory. I would say early, mid '70s. Sometime after the Mt. Sinai visit in the early '70s.

Q. Now, when you started at Merck in 1970, what was your first job?

A. As a technical services engineer, fitting new processes into an automated factory.

Q. How long did you keep that job?

A. That was about a year.

Q. And in that job did you have anything to do with asbestos?

A. Well, at the time I was a shift engineer, so I was on shift working with mechanics and chemical operators and certainly observed mechanics working with asbestos-containing materials, whether they were pipe covering or insulation on reactors.

Those kinds of things.

Q. In 1971 what was the next job that you had?

A. In about 1972 I joined the narcotics operation and so-called Factory 1, and about a year later I was promoted to run the operation.

Q. How long did you have that job?

A. Let's see. I would say until about 1976 or thereabouts.

Q. What were your basic job responsibilities?

A. At the time Merck was producing cocaine morphine, codeine from opeum and a certain type of raw material for the cocaine process. So we imported the materials and synthesized compounds, packaged then, shipped them out all under DEA regulations.

Q. From '72 to 76 did you have any responsibilities as a it related to the use of asbestos in the Merck facility?

A. Correct. This was the oldest factory at Merck. It contained a lot of asbestos and of course we had mechanics in there all the time effecting repairs.

So, again, I was able to personally observe the way pipefitters, pipe coverers and such

would work with the material.

Q. When you say mechanics, what trades are you referring to?

A. There were a bunch of trades. The ones I'm particularly thinking of are pipefitters and pipe coverers. What we used to call tin knockers, sheet metal workers that would apply metal covering over the insulating materials.

Q. And then in 1976 what was your next job?

A. 1, through about 1999 -- about 1981 I gradually picked up more operating responsibilities for different factories at the site. And I would say in about 1979 I was the assistant manufacturing manager and had responsibily for about half of the production at the site.

Q. What, if any, responsibilities did you have with asbestos during that 1976 to 1981 time period?

A. Very similar. A little bit less expossure since I spent more time in the office. But still I was on the operatoring floor. The one factory in particular that comes to mind is Factory 29, which was a predominantly outdoor facility about two blocks long, about a block wide and contained enormous amounts of pipe and had lots of corrosive

chemicals that engendered the requirement for a lot maintenance. Again, I observed the mechanics, the

pipefitters, coverers, tin smiths working with insulation materials.

Q. So in the 76 to 1981 time period the pipe fitters were working with insulation materials?

A. Sure.

Q. Were they removing?

A. Yes. They would be removing and replacing as they repaired leaks and piping and whatnot.

Q. In 1981, what was your next job?

A. 1981 I went to Stonewall, which is a factory in Virginia as the manufacturing manager. Second in charge of the plant. Large scale, gosh, radioactive, fermintation, sterile productio. Things of that nature. Bulk chemical facility. We have down in the Shanandoah Valley.

Q. How long did you have that job?

A. That was about four years. So in 1985 I moved to Puerto Rico as the operations manager and was in charge of all production and technical support functions in Puerto Rico.

Q. And how long did you have that?

A. That was about three years.

Q. You hated that job?

A. Pardon me?

Q. You hated that job?

A. PR is a difficult place to opereate.
Let's leave it at that.
Q. That was during work. After work it is
wasn't so bad.
In 1988 what wsa your next job?
A. Came back to Rahway site and I had charge
of inventory control, production management and
capital allocations for the division.
Q. How long did you have that job?
A. That was about a year, and I have been
around so long I have to refer to this. In 1989 I
returned to Rahway as the head of site services for
the location.
Q. How long did you have that job?
A. That was about two years. Two and a half
years. In that function I was responsible -- i
would talk about that as a plant engineer, mechanics
and services at the site reported to me.
Q. And in 89 --
A. That's '89 to '91.
Q. And in '89 to '91, did you have anything
to do with asbestos?
A. At that point in time the company had been

removing asbestos gradually from the Rahway site, so
we -- how would I say this? That group, my group
was responsible for maintaining the inventory of

asbestos-containing materials at the sites, and in some cases the larger asbestos jobs were done by contract folks that were skilled in that area. That was there primary function.

But our pipe fitters and coverers that were under me would remove certain materials, smaller kinds of jobs.

Q. In 1991 what was your next job?

A. 1991 I was asked to start up operations at the Whitehouse Station site, the new corporate headquartes we built in Readington and, gosh, I did that until about 2005 or so and that morfed into corporate services function.

So facilities operations, corporate aviation, creative services, credit card programs, things of that nature. All of the sort of corporate services you would expert at a large corporation.

Q. Did you have any jurisdiction at that point over the Rahway site?

A. No. I would also add there was no asbestos at the Whitehouse site being new construction.

Q. Then in 2005 what was your next job?

A. 2005, 2006 I was selling surplus factories for the company in Europe and Asia and the U.S.

Q. Then in 2006?

A. Came back to Rahway for a third time. This time as the plant manager for the site and in that situation all of the services and the production activities reported into that position.

Q. You held that job for how long?

A. Three years.

Q. Until 2009?

A. Yes. 2009

Q. Then you retired?

A. Yes.. I retired in February of 2010.

Q. When you worked at the plant did you know ed Skolnick?

A. Oh, sure. I knew Ed for 20 years. He was quite a customer.

Q. Did you know Margie McGlynn?

A. Sure. Built headquarters for her.

Q. Other than what's been marked as P-2, did you review any documents other than these in preparation for your deposition?

A. No.

Q. You have in front of you a document you

have been referring to, what is that?

A. That's a CV I did, an informal CV so I could keep track of my various jobs at Merck.

MR. PLACITELLA: Mark that P-3.

(The above document is marked P-3 for Identification)

Q. Did you consult with any witnesses in preparation for for your deposition today?

A. No. Only two attorneys.

Q. One was Mr. Seaver and the other was --

A. A nice gentleman talking to us from -- I don't remember his name.

MR. SEAVER: Merck general counsel, Marsh Coleman. Assistant counsel.

Q. How long did you spend preparing for the deposition?

A. I would say two hours.

Q. I'm just focusing on the Merck Rahway facility.

A. Sure.

Q. The Merck Rahway facility was about 1020 acres? How big was it?

A. Give or take 120 acres, 120, 130 structures.

Q. In the 1960s and 1970's was it about

4,000 employees?

A. I would say so. I have less knowledge of the whole population. I would agree that's a rough number that makes sense. Still about 4,000. A

little more than 4,000 folks.

Q. How many buildings?

A. About 120, 130. In that range. That includes sheds. Those are separate structures we are talking about.

Q. Am I correct research was also housed there?

A. Sure. Basic chemical research was house at Rahway. Pharmacutical, of course, was done at West point predominantly.

Q. Other than research, am I correct that the Rahway facility was essentially a chemical And refining facility?

A. That's correct. Rahway was a multi-purpose, predominantly a multi-purpose purpose, what we call API, Active Pharmacutical Ingredient facility.

Q. And it was kind of a city in and of itself?

A. In a lot of ways, yes.

Q. You had your own security?

A. Security, fire, food services, et cetera, et, cetenra, et cetera. It was quite self-contained.

Q. You generated your own power?

A. A portion of the power required for the

site. Twenty, thirdy percent. In that range.

Q. You had six boilers?

A. You got me on numbers But that would be an approximate number I would agree with. Sizeable powerhouse.

MR. SEAVER: Still talking in what time frame?

MR. PLACITELLA: The '60s and '70s.

A. Yes. Still about six boilers at Rahway. They are just different than they were back in the '70s.

Q. You had your own set of hired labor to maintain the facility, correct?

A. Correct. We had two unions on-site. There was the IUOE, the operatoring engineers that ran the powerhouses, operated the powerhouse and the outside facilities associated with it. And then in those days it would have been OCAW, Oil Chemical and Atomic Workers where the production workers and the mechanics were.

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Q. And you had your own pipe coverers, correct?

A. Pipe coverers, tin smiths and pipefitters.

Q. Electricians?

A. Of course.

Q. Labors?

A. Yes. Masons, millwrights. There were probably 15 crafts there. I struggle to remember them all.

Q. Would you agree with me that without proper safety precautions it was a dangerous place to work?

A. That's kind of a leading question.

Q. I'm allowed to ask leading questions.

A. Without proper safety precautions I would agree almost any site that manufacturers something is a dangerous place to work.

Q. Did you have a health and safety department on site?

A. Yes, we did. I would say in those days we both had a local safety department and since it was the corporate headquarters in the '70s, we also had a corporate, small corporate safety function.

Q. So both the local health and safety department and the corporate headquarters were in

Rahway?

A. Correct. And health and safety are two separate functions.

Q. I'm going to get to that.

A. All right.

Q. Approximately how many people were

involved in the local health and safety department?

A. My best estimate would be five to six. It was a relatively small organizations in those days.

Q. What about corporate safety?

A. Corporate was of a like size. I would say five, six. Again, it was a small organization in a relatively small corporation back then.

Q. Who was in charge of the local health and safety?

A. I want to say in that era Ken Doremus probably the fellow. That's the name that comes to mind in the '70s.

Q. He dated all the way back to the 1950s, his involvement?

A. Ken had white hair when I new him in the '70s. I'm thinking he went back that far.

Q. What about the corporate safety department? Who was in charge of that?

A. Jack Snyder. Again, another long term

Merck employee.

Q. That's the person whose deposition you read?

A. Correct.

Q. What were the responsibilities of the health and this safety department in the '60s and

the '70s?

A. Again, two separate departments. It wasn't health and safety. We had plant health with the health department which reported up to human resources and in those days --

Q. Let's just focus on safety. Is the health department another word for a medical department?

A. Yes.

Q. Let's just talk about the safety department for a second.

A. Safety set the rules of operation. If we needed to do some hot work on a back-up, we handled an enormous amount of solvents and a variety of solvents at the Rahway site in the course of manufacturing materials.

Most of the equipment that we had was what's called explosion proof. So if we were doing electrical work or, gosh, welding or anything of that sort in the factory, the safety department

would have a representative there that would fill out the permit for doing that kind of work. And later in the '70s, after the sort of hazards of asbestos were recognized, there was also a permit required to do asbestos work, and safety would officieate over that as well.

In addition, many of the factories had

what were called a safety and service person. They had a dual reporting relationship. These were hourly people. They worked for the factory, but they also had sort of a dotted line into safety. And these folks supplied gloves, respirators, safety equipment to the factories.

Q. Did the safety people track the number of injuries per year that happened at the job?

A. Yes, they did. The reporting changed, of course, once OSHA came in and the tracking and reporting was more formalized.

Q. Did you have industrial hygienist on staff?

A. I don't remember. Prior to 1972, again, the visit from the Mt. Sinai folks, the Selikoff folks, engendered quite a reaction from the company. I don't recall prior to 1972 having an industrial hygienist on site.

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Once we became aware of asbestos, or more a aware of asbestos, as the case may be as a hazard, we then did add, to my memory, an industrial hygienist or two. The name that comes to mind is David Kirk. I believe Dave arrived in 1972 or '73. He just comes up in my memory as a very capable guy.

Another name that comes to mind is, I

believe, Peter Calagueri was also an industrial hygienist.

Q. Who was the person running the Merck Rahway plant in the '70s?

A. In the 1970s it was first -- plant managers traditionally don't last a long time at Rahway. So there's a few names here.

But in the '70s it was Clarence Peno, P E N O, long since retired, and David Conkling, also was in that area era. And after Dave came Bill Lahorn. And that will bring you up to about the early '80s.

Q. Who was the person at the Rahway facility making the decisions about what to do in response to information received about asbestos?

A. I would say --

MR. SEAVER: Objection to the form because it is sort of vague. Chris, are you talking about

in response to, as he already testified, Mt. Sinai and OSHA or are you talking in general terms before that time period as well?

MR. PLACITELLA: In general.

A. I think it is sort of a typical relationship. The central safety, in some cases, has their feelers out beyond the plant, and as they would recognize hazards, whether it is asbestos or

solvents, the central safety folks would formulate a position on the part of the company. That would then be communicated with the line organization, the plan manager and the local safety department.

These would be guidelines or they would be requirements, depending upon the nature of the hazard. The plant manager is overall fully responsible for the operation.

When corporate safety says this is the procedure to follow, the local safety folks put that in a format that that location understands and the plant manager enforces those regulations.

Q. So top down. Who is the person at corporate safety that is dictating the policy on how to respond to hazards, industrial hazards in the plant?

A. The head of corporate safety in those days

was Jack Snyder.

Q. Do you know how long he had that job?

A. I can remember going out to Dow Chemical with him in 1980. So he had the job at least in 1980 or 1981.

Q. Do you know when he got there?

A. He went back to the '50's, at least. Probably earlier. I would say maybe the mid '40s.

Q. So he was ultimately the person at Merck who was making the decisions on how to respond to whatever industrial hazards were in the plant?

A. Correct. On the advice, if he had experts in various fields, he would take the advice of those experts and then publish the regulations or the procedures.

Q. Now, let's focus on the medical department. Was there also a local and corporate medical department, both located at the Rahway facility?

A. Correct.

Q. Who was in charge of the local medical department?

A. I don't remember the names from back then. We had at least two doctors on staff and those of us that handled things like benzene, for instance, were

scheduled for periodic blood testing.

That was in the '70s, the early '70s in particular. That was the most frequent reason to go to plant health.

Q. So you had two doctors. How many people worked in the local Merck medical department?

A. I would say at least five or six. Couple of doctors, couple of nurses and at least one admin.

Q. Did you have also relationship at that

point with Rahway hospital where people were sent when issues came up?

A. As far as I know we only sent to Rahway if we had an industrial accident and they needed first aid or some treatment beyond first aid.

Q. And in terms of the corporate medical department, that was also located at Rahway?

A. It was. I'm less familiar with the folks in the corporate medical department in that era.

Q. Do you know who ran that?

A. I don't. My dealings at that point in time were exclusively with the local folks.

Q. Would you agree with me that during the '60s and '70s and '80s Merck had both the money and the resources to do whatever was necessary to protect workers and their families?

A. I can't testify to the '60s, not having been there, but certainly in the '70s and '80s, sure.

Q. Did you know Gary John Chavan, Sr.?

A. I knew of John Chavan, Sr.. The name is very familiar. He worked there at Rahway for quite a long time. I didn't know him personally.

Q. Do you know his son?

A. No.

Q. Did you have the opportunity to read his deposition prior to today?

A. No, I didn't.

Q. When I say his, I mean the father.

A. No.

Q. One of the places he worked was in the research building. Are you familiar with the research building?

A. Very. Well, buildings, plural.

Q. Buildings. Can you tell me what to your knowledge what equipment in the research buildings were historically insulated with asbestos-containing products?

A. Predominatnly steam pipes and I would -- my judgment would say that's what Mr. Chavan worked on predominantly, leaking steam pipes and such.

Q. About how many miles of steam piping was there in the Merck facility in total, if you had to estimate?

A. Based on the numbers I saw in the materials that you marked in evidence, roughly between eight and ten miles at the site at the peak.

Q. So, is it fair to say that during the '60s and 1970s there was eight to ten miles of asbestos-containing pipe covering that Mr. Chavan potentially would come into contact with?

A. Yes. As a pipefitter he could work in any part of the plant.

Q. In research, did they also use transite?

A. Transite was used in a lot of applications. As you probably know it is a solid asbestos material and it was used not only as insulation, but as actually structural member in things like dryers.

Q. Do you know whether the counter tops in the laboratories contained asbestos?

A. I know the countertops were soap stone. I wouldn't speculate. I have no evidence or no knowledge whether that soap stone had asbestos or not.

Q. What about the hoods? Do you know whether

they were lined with asbestos in the laboratories?

A. Some hoods in that era, at least in the factory, were lined with transite. I don't know about the research area in that area.

Q. What about the doors to the laboratories, were they asbestos core doors?

A. Not to my knowledge. I wouldn't speculate.

Q. What about the floors?

A. Vinyl asbestos tile.

Q. And what about the ceilings?

A. Ceilings were mineral fiber. Well, they were typical Celotex or, gosh, the same kind of ceiling tile you find today. In that era there was a slightly different type of tile called, oh, gosh, spline type tile that went together. But I don't believe -- I'm not certain, but I don't believe, I'm not certain, but I don't believe it contained asbestos.

Q. According to Mr. Chavan's deposition, he described how he believed he was exposed to asbestos at Merck. He said that he knocked the asbestos off the pipes. Would that be an accurate statement?

A. Yes. I've seen pipefitters, if you understand the type of insulation we used, there's a

metal jacket around the asbestos. The asbestos is kind of an anulis and the pipe is in the center. I would see pipefitters occasionally, again, back in that era, strip off the metal and then hit the asbestos with small hammer and have it drop off.

Q. He also indicated that he mixed asbestos cement. Did you ever observe that?

A. Oh, sure. On elbows and things of that nature where you had to join two pieces of straight asbestos insulation or two pieces of any kind of insulation, there's typically some cement applied to

seal up the cracks around that elbow. And way back when in the early '70s I'm sure that contained asbestos. Again, as we became became aware of the hazards, we moved to non-asbestos type cements.

Q. When you say as we became aware of the hazards, you are talking about Merck, from your knowledge?

A. Right.

Q. Do you have any personal knowledge about how far Merck's knowledge goes back concerning the dangers of asbestos?

A. From my experience at Merck, up until the Selikoff -- To me the Selikoff visit was really a pivotal point relative to asbestos.

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Before the Mt. Sinai folks came to the site and found some asbestosis in some of our pipefitters, it was viewed as kind of a nuisance dust. It wasn't viewed as a significant hazard.

After that visit, and after the epidemiological work, it was viewed as a significant hazard and the company reacted I thought pretty quickly in terms of halting its use.

Q. That's your personal knowledge?

A. Correct.

Q. You don't know as you sit here what the

people in the medical and health and safety department at the corporate level knew before 1972?

A. No. I can testify to the practices that we had in the workplace and the rules and regulations that we operated under the safety regulations.

Q. What you were told?

A. Correct.

Q. He testified that valves were covered with asbestos. Is that true?

A. Sure.

Q. He said he worked with boilers that had asbestos.

A. Also correct.

Q. He said he worked with stills that had asbestos.

A. Yes. Stills, another word for reaction vessels, tanks, 500 to say 3,000 gallons, and in many cases the older ones were insulated with asbestos.

Q. Now, how big is that?

A. 500 to 3,000 gallons. A 3,000 gallon vessel might be eight feet in diameter and 10 feet tall.

Q. And the entire outside covered with asbestos?

A. Again, the older ones would have been covered with asbestos-containing blocks. Solid material that was cemented on to the metal and then that would have been covered with a metallic jacket.

Q. He said he worked with gaskets that had asbestos. Is that accurate?

A. I believe so. In those days we certainly had gaskets that were reenforeced with fiberous asbestos.

Q. He said he worked on condensors that had asbestos.

A. Condensors would have been insulated the same way as a reaction vessel.

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Q. What is a condenser?

A. A condenser. A still, think of making vodka or something. The still is where you boil the material, it goes up a riser, a piece of large diameter pipe, which also would have been insulated. And then it goes up into a condenser which contains a bundle of tubes inside of it it with cooling water.

The cooling water inside this condenser is a like a large piece of pipe. The cooling tubes would condense the vapor being driven off the still and then in turn that condensed vapor, the liquid,

would end up in a receiver, another vessel.

That entire train, since it would be operating at a relatively temperature would be inisulated. Again, in the old days, in the '60s and '50s, that would have been asbestos.

Q. And into into the early '70s?

A. Yes. We. By the ,gosh, by '73, '74 we weren't applying any new asbestos, but clearly we had a large inventory of older equipment, extent equipment.

Q. How big is a condenser?

A. A condenser varies in size. It could be the length of the table you are sitting at say six

feet, 10 inches in diameter. It could be 15, 20 feet long and two feet in diameter. Depending upon the volume of material going into it.

Q. Do you have an estimate of how many condensaters like that were on the Merck property?

A. 100, 200. A significant number.

Q. What about the stills that had the asbestos? How many of those were on the Merck property?

A. Gosh.

Q. Best estimate.

A. Easily somewhere between say 200 and 500. Quite a large number.

Q. What about the valves he said he worked on covered with asbestos? How many were those were on the property?

A. Thousands.

Q. He also indicated he worked on heater exchangers where he believed he was exposed to asbestos.

A. To me a heater exchanger is effectively a condenser. Same thing.

Q. He also talked about hot water tanks that he believed had asbestos. Is that correct?

A. Yes. When I said vessel, well, we were

talking about reactors and such. That would encompass hot water tanks, it would encompass solvent receivers, stills, reactors. All sorts of closed tanks for water or chemicals.

Q. How many hot water tanks insulated with asbestos would you estimate are on the Merck property that you had jurisdiction over?

A. Back then it be could be 100. Again, I'm going down to the smaller tanks associated with condensate return systems where you take water off of a radiator and send it back to the powerhouse.

Q. He also indicated that he worked with fire boxes that were insulated with asbestos? Do you

know what a fire box is?

A. That's a term I'm not familiar with.

Q. He indicated that he was in charge of maintaining insulation when he was in the research department.

A. If I remember correctly he was a pipefitter.

Q. Right

A. And There were overlapping jurisdictional disputes that came up between pipe coverers, that was their sole job was maining insulation and applying new insulation and pipefitters.

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The pipefitters could do incidental -- for instance repair a steam like. They could take the insulation off around that leak and put back on insulation, but I wouldn't say they were in charge of maintaining insulation. That would have been a pipe coverer's job.

Q. How many buildings were in research?

A. Rough guess I would say 30 or 40.

Q. He said he worked primarily in the research department. That wasn't just one building. It was 30 or 40 buildings?

A. Yes. Pilot plants, laboratories.

Q. He indicated in his deposition that when he knocked the asbestos off the pipes he did it with

a hammer and there was so much dust you couldn't see the person next to you. Did you ever observe that?

A. I never observed that magnitude of dust. I did observe pipefitters knocking asbestos-containing insulation off with a hammer, but I would say that's an exaggeration. There would not be that amount of dust coming off of that type of insulation, in my opinion.

Q. Well, would it undoubtly generate a dust cloud that would last up to ten minutes in a work area?

A. Ten minutes?

Q. Yes.

A. No. A minute, two minutes. But, again I'm used to people taking ordinary care with what was to some degree regarded as nuisance dust. I'm used to seeing a pipefitter, again, in that era, knock off a piece of insulation and you would have a small cloud of dust. Not that large and it would disiipate relatively quickly. A minute, two minutes.

MR. PLACITELLA: Can we mark this as P-4?

(The above document is marked P-4)

Q. I have in my hand, and I'll show you a memo from 1975 from a G.D. Kirk. Who is he?

A. Dave Kirk, an industrial hygienist.
Q. And what was his job?
A. He would -- as an industrial hygienist, he would take samples of the air. One of the functions would be to take samples of air in the work space. That might be the kind of thing where you had an air pump on and you could be taking solvent reading. You could also be counting asbestos fibers.
Q. When did he start doing those kinds of tests?
A. Dave was hired, I believe, in 72 or '73.

So I would say by '75 he was probably doing that sort of work.
Q. Who is Dr. Foldy?
A. Steve Foldy. He was a medical doctor, I believe, in plant health.
Q. And J. P. Larkin, who is that?
A. Joe Larkin was probably the number two guy in human resources. Handled most of the labor concerns for human resources.
Q. I'm going to show you this document marked P-4 for identification from the hygienist at Merck dated 7-15-75 and ask if you ever have seen that before?
A. First of all, I have not seen this before. Let me just finish reading it.

Q. Sure.

A. Well, my recollection of the dust cloud differs from this.

MR SEAVER: Is there a question pending?

Q. I asked have you seen this before?

A. No, I haven't.

Q. This is a memo from the hygienist at Merck, correct?

A. Yes.

Q. He is talking about pipefitters, right?

A. Right.

Q. He is talking about Mr. Chavan specifically, is he not? Look at the next page.

A. The rest are redacked, so I'm assuming, yes.

Q. Somebody took out all the other names. He says until approximately a year and a half ago it was customary for pipfitters, that's like Mr. Chaven, right?

A. Um-hum.

Q. To knock off pipe insulation in preparation for repairing a valve or a flange, for example. This they might do in a rather crude manner such as hitting with a heavy tool, correct?

A. That's correct.

Q. This undoubtedly would generate a dust cloud which could last up to ten minutes, particularly if the work area as confined with little air movement, correct?

A. That's what it says.

Q. And he would be the person in a position to know that best, would he not?

A. That's argueable. Again, my personal observations, I already testified pipefitters operate in this manner with typically a hammer being

the heavy object. I'm not used to seeing a dust cloud which persisted for up to ten minutes.

Q. He says that this could happen maybe once a week or several times a day, does he not?

A. I won't argue with that.

Q. And that the pipefitters who were doing this were provided no respiratory protection at all, correct?

A. I would say they were provided respiratory protection. We always had respirators available. Whether they will wore them or not, maybe another mat.

Q. When did you first start providing respirators to pipefitters who were working with insulation?

A. As far as I remember respirators were

routinely available throughout the factories. Again, the availability was there. Whether they were used or not is another story.

Q. When was the first time Merck told the pipefitters they should be wearing respirators to protect themselves from asbestos exposure?

A. I believe that our concerns were heightened after, again, the Selikoff visit or the selikoff work in the early '70s at Rahway. So I

think that pretty much lines up with this.

If I take a year and a half off of this, it's is early 1974 which is about when I think those folks from Mt. Sinai came to the site and we discovered that there were some serious hazards with asbestos.

Q. Can we agree that at least prior to 1974, thereabouts, Merck never instructed pipefitters to wear protective respirators when they were working around asbestos insulation?

A. I can't testify to that. I can testify to what I saw in the workplace, which was people, pipefitters knocking insulation off pipes without respirators on. That's certainly a fact. But, again, I just don't know what they were told in terms of work rules.

Q. Even after OSHA was passed you had incidents of people cutting asbestos and asbestos dust going into the ventilation systems and being carried out throughout the building, including into the locker rooms, right?

A. Not to my knowledge.

MR. SEAVER: Can I have the question read back, please?

(The above question is read)

MR. SEAVER: Is that incidents, plural, Chris?

MR. PLACITELLA: Yes.

Mark this P-5.

(The above document is marked P-5 for Identification)

Q. I'm going to show you what's been marked P-5 for Identification. This is from a Mr. Zehler. To you know who he is? Z E H L E R?

A. That name doesn't ring a bell.

Q. How about about a Mr. Gardener?

A. Alan Gardener was the plant engineer.

Q. What was his job?

A. His job would be -- he headed the organization that provided the mechanical repairs for the site.

Q. And who was Mr. Eckenfelder?

A. Don Eckenfelder was safety. That's a name I hadn't heard in a long time.

Q. How about M. G. O'Brien?

A. I don't know.

Q. I'm going to show you a document from E. J. Zehler 6-22-73 to Mr. Gardener. See if you have ever seen that before?

A. No. I have not seen the document before,

nor am I familiar with the incident.

Q. This was two years after OSHA was enacted, correct?

A. I believe you are about right.

Q. And this document -- where is building 81?

A. Building 81 was the main shop. I demolished that about two years ago. It was the main shop that supported the factory. That's where the mechanics, carpenters, pipefitters, millwrights would work.

Q. And that's where their lockers were?

A. Yes. The lockers, we had lockers on the second floor of that building.

Q. This document says that the asbestos got into the ventilation system in 1973 and went into the lockers where the pipefitters and everybody else changed, right?

A. Yes. The configuration, to be precise, there was a dust collector on the west side of that building and what I'm understanding from this memo is that the dust collector for a carpentry shop picks up large particles very effectively, but small particles of dust it is not very effective.

It is vended into the atmosphere. The wind is from the west predominantly. The air

intakes for the locker facilities on the second floor of that building were separated from this dust collector by, I don't know, 10,15 feet. That kind of a configuration. So it probably came out of the dust collector, was blown into the intake of the ventilating system for the locker room.

Q. And so the asbestos that was released in that building was also released into the locker rooms where the men changed, correct?

A. That's what it says.

Q. Are you aware of any documents or information that the men were actually told or warned that the lockers that they worked in were contaminanted with asbestos?

MR. SEAVER: Objection to the form.

A. I'm not familiar with the memo and I'm not familiar with any action subsequent to or concerning the memo.

MR. PLACITELLA: Let's take five.

(Recess taken)

Q. At some point in time, I think you told me, you served as the plant manager at the Rahway facility, correct?

A. That's correct.

Q. And there was somebody with that same job in the '70s and '60s, correct?

A. Yes. In that era I think the individual would have been Clarence Peno or Dave Conklin. They changed right around that point.

Q. And was it the plant manager's job to know the dangers enherent in the jobs that the people were asked to do at Merck?

A. The plant manager is responsible for the safety operations of the site. There was no question about that, regardless of the site.

Most plant managers, particularly at a places as complcated and large as Rahway, depend upon their subordinates to manage those hazards. In that era Allen Gardener, the plant engineer, reporting directly to the plant manager.

Q. Would you agree that a company like Merck is not allowed to needlessly endanger the workers

and their families?

A. I would go beyond that. I would say the company take significant efforts as so as not to endanger their employees.

Q. Would you agree that Merck, as the employer, should not needlessly exposes its employees or the employees' families to asbestos?

A. I would say once the hazards of asbestos were fully understood, Merck should not, would not and did its best not to expose employees to those hazards.

Q. So you would agree that Merck, as the employer, should not needlessly expose workers' families to asbestos?

A. Well, again, with the stipulation that once the hazard is recognized we should not expose workers or their families.

Q. And do you recognize that Merck had an obligation to provide a safe workplace to its employees, correct?

A. Of course.

Q. You recognize that Merck had an obligation to inform employees about the hazardous substances they were required to work with or around?

A. Yes.

Q. If Merck had actual knowledge about the

dangers of asbestos would it have been important for that knowledge to be communicated to the plant manager running the Rahway facility?

MR. SEAVER: Objection to the form. I don't know what you mean by the term dangers of asbestos. Pretty vague term.

If you can answer the question, go ahead.

A. What I would say in general, whether it is asbestos or solvents or toxic chemicals that employees would routinely work with, there is an obligation to inform our employees of the associated hazards. There's no question. But first the hazards need to be recognized.

Q. Did you have a plant or a major facility in the State of Pennsylvania?

A. Yes.

Q. Going how far back?

A. That went back -- it was originally the Cherokee Powder Works in Danville, Pennsylvania. It was built as munitians plant in World War II. And we leased the plant in the early '50s, bought the plant in '53 or '54 and sold it recently .

Q. You are aware, I think you told us before, that there were cases of asbestosis diagnosed at the Merck plant, correct?

A. That's correct.

Q. And people received compensation eventually for some of those diagnoses, correct?

A. In the materials in evidence I did see that 14 or 20, some number like that, of our employees received compensation.

Q. And you agree that Merck would be charged with the knowledge of what was in the laws related to what was compensable for injuries that could be sustained on their plant, correct?

A. Restate the question a little bit more clearly.

Q. There are laws that govern Workers' Compensation claims for people who are hurt on Merck's premises, correct?

A. Absolutely.

Q. And Merck was responsible to know what those laws were?

A. Correct.

Q. In making your statement that Merck was not knowledge about the dangers of asbestos before Dr. Selikoff visited them, did anyone ever tell you that there was a law passed in 1944 charging Merck with responsibility for asbestosis claims for people who would get sick in their plant?

MR. SEAVER: Objection to the form.

A. Should I anwer?

MR. SEAVER: Can you answer that question?

A. I'm not familiar or knowledgeable of that.

MR. PLACITELLA: Mark that P-6.

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(The above document is marked P-6 for Identification)

Q. This is the New Jersey Compensation Statute for 1994. Do you see where it talks about asbestosis?

A. Yes, both asbestosis and silicosis.

Q. Was this information ever made known to you in terms of your knowledge when you said Merck did not know about the dangers of asbestos before the '70s?

MR. SEAVER: Objection to the form. Again, when you say the dangers of asbestos, I don't think the witness used it quite the same as you are, counsel.

A. What I can say is in the workplace we were not cognizant of the quote un quote dangers of asbestos.

Prior to the Mt. Sinai thing, asbestos was, gosh, treated as I said before, almost as a

nuisance dust. Akin to sawdust. Like that.

Q. Did the nuisance dust cause asbestosis?

A. Not to my knowledge.

Q. Do you know what the Merck Manual is?

A. Of course.

Q. What is the Merck Manual?

A. The Merck Manual is -- well, there are several Merck Manuals. The Merck Manual I'm most familiar with is the chemical index basically. A listeding of chemicals, their synthisis and some of their effects on humans.

Q. And who relies upon the Merck Manual?

A. I would say students, chemists, people that manufacturer chemical compounds. It is a reference book akin to a dictionary or abbreviated enclylopedia.

Q. Does the safety department at Merck corporate headquartes rely upon the Merck Manual?

A. I wouldn't think so.

Q. Would you agree with me that whatever was in the Merck Manual the doctors at Merck would be aware of?

A. The Merck Manual is, gosh, 800, 900. Pages, some size like that. Most people I know, if they had a question about a chemical, how it is made, patents, thing of that, would refer to it as

an abbreviated enclyopedia.

Q. Well, it was published right in Rahway, was it not?

A. It is published in Rahway by a publishing

group that was and is still separate and distinct from much of the rest of the company.

This is hard to express. Almost feels like an independent organization that publishes this on a sort of pro bono basis. It is a good general reference. If I were an industrial hygienist or If I were a safety expert, I would not use that book as a reference. I would go to a much more detailed, deeper kind of a reference materials.

Q. Well, the Merck Manual recognized asbestosis as an industrial disease as early as 1950, did it not?

A. I don't know.

Q. In terms of your testifying before that Merck had an obligation to warn if it had some knowledge about a danger, were you aware that the Merck Manual recognized asbestosis as an occupational disease in 1950?

A. No. As I said, I would use it for an occasional look at a solvent or a particular chemical.

MR. PLACITELLA: Can you mark this next, please.

(The above document is marked P-7)

A. You will have to pardon me. I was talking

about the Merck Manual which is a reference book of chemicals. This is another Merck Manual aimed at physicians.

Q. You have in front of you P-7. That's a Merck Manual?

A. Yes. This is a Merck Manual. Again, the audiences is not chemical engineers or chemists. The audience for this particular manual is physicians.

Q. Doctors?

A. Correct.

Q. And that's published by Merck and Company in Rahway, New Jersey, correct?

A. That's correct.

Q. And that is excerpt from the 1950 manual. Do you see that?

A. Yes.

Q. And it has a section on asbestosis, does it not?

A. Yes, it does.

Q. And it does not call asbestos a nuisance dust, does it?

MR. SEAVER: Objection to the form. It says what it says, counsel.

A. I don't think it calls it anything

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particular, to tell you the truth.

Q. It says it is like silicosis, correct?

A. Correct.

Q. Was that recognized as a serious disease?

A. My knowledge is sort of limted in that area. I thought silicosis was a disease of coal minors and such like that. Again, my knowledge is very limited. I'm not a doctor.

Q. Would you agree with me that this clearly indicates that Merck was aware of the disease asbestosis in the year 1950?

A. Just let me read this. Apparently so.

Q. Did Merck have contracts with the federal government?

A. I presume so.

Q. In testifying about what Merck knew about the dangers of asbestos, were you aware that in order to get a contract with the federal government, as of 1952, you had to comply with an asbestos standard for exposure?

A. I'm not familiar with that.

MR. PLACITELLA: Mark that P-8.

(The above document is marked P-8 for Identification)

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Q. In front of you is P-8. This is a copy of the Walsh-Healey act. Have you ever heard of the Walsh-Healey Act?

A. No I haven't.

Q. For 1952?

A. No.

Q. Were you aware that the State of New Jersey required Merck to test for asbestos exposure going back to 1958?

A. Again, I'm not familiar with that.

MR. PLACITELLA: Mark this P-9.

(The above document is marked P-9)

Q. You have in front of you P-9 for Identification. These are the New Jersey regulations number 3, Threshold Limit Values, excerpts. Have you ever seen these before?

A. No, I have not.

Q. Do you see of the second page where it talks about duty of employer?

MR. SEAVER: It would actually be the fourth page of the exhibit. Is that where you are directing him?

MR. PLACITELLA: Right.

MR. SEAVER: R. S. 34:6-48?

Q. It talks about the duty of the employer. Do you see that?

A. Um-hum.

Q. And it talks about the duty of the employer to prevent occupational and other illnesses?

A. Correct.

Q. Can you turn to the page, to the next green fab where it talks about the obligation to do testing and dust counts in the employment environment?

MR. SEAVER: Objection to the form of the question.

A. Should I reply?

MR. SEAVER: You are asking if he sees what?

Q. 4.1 says sampling, testing and anaylsis to determine the atmospheric concentration of dust, fuems, gases and mists and vapors shall be performed only by technically qualified persons.

4.3, samples of workroom atmosphere should be taken wherever there exists potential exposure to any toxic dust, fumes, gas, mists or vapor, correct?

A. Correct.

Q. And do you see the final page?

A. Yes, we do.

Q. Does it list asbestos as a toxic dust?

MR. SEAVER: Objection to the form. The heading is substances, counsel.

MR. PLACITELLA: Toxic substance.

MR. SEAVER: It says substance, counsel.

Q. What does it say?

A. Substance. It includes silica, talc, Porthand cement, mica dust.

Q. And asbestos?

A. And asbestos and aluminum oxide.

Q. Can you tell me what Merck did between 1958, when these regulations were promulgated, and 1974 or 1975 when you say you started taking dust counts in the plant to comply with this regulation?

MR. SEAVER: Objection to the form. You can answer the question, if you can.

A. What I can say is at least that we did provide, as I already testified, respirators and protective equipment, free of charge to employees.

We had personnel in the factories that stocked those kinds of items in the workplace, in the factories and mechanical shops.

Whether it was warn properly or whether it

25 was warn all the time, you know, was another matter.
54

1 Q. My question is what did you do in terms of
2 dust counts in the work environment to see what the
3 level of asbestos dust was in the air pursuant to
4 these regulations between 1958 and 1974 or 1975?
5 A. In the departments I was responsible for
6 I don't recall any counts being done.
7 MR. PLACITELLA: Mark this that P-10.
8 (The above document is marked P-10 for
9 Identificationr)
10 Q. You have in front of you P-10, which is a
11 membership list for the American Industrial Hygiene
12 Association from the same year, 1958. Do you see
13 that?
14 A. Um-hum.
15 Q. Did you see that Merck had a
16 representative as a member of the American
17 Industrial Hygiene Association?
18 A. If you would call out a name it would save
19 time.
20 Q. Mr. Doremus. I think you talked about him
21 before?
22 A. Yes.
23 Q. It lists him as the Chief of Industrial
24 Hygiene, Industrial Health, Merck and Company

Rahway, New Jersey, correct?

A. I'm trying to find it.

Q. Sure.

A. Yes, it does.

MR. PLACITELLA: Mark that P-11.

(The above document is marked P-11 for Identification)

Q. This is a 1958 publication put out by that same organization that Mr. Doremus was a member of, the Industrial Hygiene Association. Do you see that in the upper right-hand corner?

A. I do.

Q. And this refers to what?

A. It refers to asbestos and it calls out recommended maximum concentration of 5 million particles per cubic foot of air.

Q. Certainly in 1958 Mr. Doremus aware of the publications and regulations put out by his own organization, would you agree?

MR. SEAVER: Objection to the form. Objection to whether the witness is competent to speculate about what someone else may or may not have known.

A. I would just make a comment on the side. I would be personally curious what 5 million particles per cubic foot of air looks like in terms

of capacity. Can you see through it? It is a startlingly high number of particulates of air to me.

Q. Would it shock you to know it is not visible to the naked eye?

A. It is would surpise me, yes.

Q. I think the testimony, expert testimony in the case will establish you can't see 5 million particles per cubic foot.

A. Fair enough.

Q. Certainly when it came to asbestos dust at the Merck plant, you could see the dust that was generated by the pipefitters, correct?

A. I could see some dust in the work area, that's correct. I have no particular idea how many particles per cubic foot that would be.

Q. You would never know unless you tested it, right?

A. Correct.

Q. Now, you are aware that Merck was also a member of the National Safety Council?

A. Yes.

Q. And that membership went back to at least the early '50s?

A. I would think so. I don't have any direct

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knowledge. We have been a member a very long time.

Q. Do you know who is Mr. Alibisser is?

A. That's a name I'm not familiar with at all.

MR. PLACITELLA: Mark this next.

(The above document is marked P-12)

Q. If you look at the last page, do you see a Mr. Alibisser listed for Merck?

A. Yes. Unfortunately that's a name I don't recall at all. 18 years before I joined the company.

Q. He was from Rahway, New Jersey?

A. That's what it says.

Q. And does it also indicate with an asterisk he was the past chairman?

A. Of an advisory committee.

Q. Of the chemical section?

A. Hang on. I believe you are correct.

Q. And in working, in terms of plant safety, do you know whether Merck ever consulted the National Safety Council Accident Prevention Manual?

A. I don't.

Q. I am going to show you an excerpt of the National Safety council Accident Prevention Manual from 1964.

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MR. PLACITELLA: Mark that.

(The above document is marked P-13)

Q. I believe the evidence will show that Merck was still a member of the National Safety council at this is point in time. Do you know whether this publication was in the possession of the Merck Safety or Medical Department?

A. I don't.

Q. Can you go to the last page where I have a tab? Does it say there in 1964 that there's good evidence that asbestos causes lung cancer?

A. It says here inhalation of exessive quantities of asbestos fiber can produce a fibrosis. I don't know what excessive is. Then finally it says there's also good evidence that inhaled asbestos causes lung cancers.

Q. And the National Safety Council also told Merck, did it not, that even a slight haze of asbestos dust was too much?

MR. SEAVER: Objection to the form.

A. It may or may not. I don't know.

MR. PLACITELLA: Mark that P-14.

(The above document is marked P-14 for

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Identification)

Q. You have in front of you P-14 with the transactions from the 1966 National Safety Congress?

A. Yes. Automotive machine shop, power press and forging.

Q. And there was an article in there by the U.S. Department of Labor. Do you see that?

A. Hang on.

Q. Mr. Henning? Just to move it, do you see in the lower right hand corner where my tab is?

A. Yes. I see an article by Van Alta.

Q. Does it say exessive amounts of asbestos dust is only enough to constitute a slight haze in the air?

A. This individual says I might say that excessive amountsof asbestos dust is only enough to constitute a slight haze. That's correct.

Q. Now, you indicated when we started that Dr. Selikoff actually made a visit to Merck sometime in the early '70's?

A. Actually, as I remember it, he was the person at Mt. Sinai responsible for a visit. The gentleman I escorted around several locations was a gentleman by the Schwartz. I don't recall his first name.

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Q. The relationship between Merck and Dr. Selikoff did not begin in 1972 or 1973 when people from Mt. Sinai visited there, did it?

A. The extent of my knowledge is that for whatever reason this gentleman Schwartz visited the Rahway site to look at the way we handled asbestos. I showed him around the factory and he worked for Selikoff in Selikoff's group.

Q. Well, Merck was involved with asbestos and Dr. Selikoff going all the way back to the early 1960s, wasn't it?

A. I don't know.

Q. In making your statement that you only knew about Selikoff and the dangers of asbestos after the visit, you were not aware of any relationship between Merck and Dr. Selikoff going back to the early '60s?

A. No. I was in manufacturing and, you know, I could sea change in the way we regarded asbestos and the hazards of asbestos after that visit. That's what I testified to.

Q. Who is G.W. Merck?

A. George W. Merck, one of founding fathers of the company.

Q. He was the top banana in the '60s, right?

A. Correct.

MR. PLACITELLA: Mark this next.

(The above document is marked P-15)

Q. You have in front of you from 1965 the anals of the New York Academy of Sciences. Do you see that?

A. Yes, I do.

Q. And can you turn the next page, please?

A. Boards of trustees, calss of '62 to '65 include G.W.. Merck and I see Selikoff is listed as an author on the first page.

Q. Right. The first page talks about the biological effects of asbestos, correct?

A. Correct.

Q. This is an excerpt of about a 1,000 page book that's put out and George Merck, the top banana at Merck, is listed on the second page as part of the board of trustees for the New York Academy of Sciences, is he not?

A. That's correct.

Q. Certainly Merck had access to this publication, would you agree?

A. No particular knowledge whether the publications would go to the trustees or not.

MR. SEAVER: Counsel, can you represent

whether the second page of this exhibit is in fact

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the second page of this document?

MR. PLACITELLA: It is.

Q. Mr. Chavan, Sr. was a pipefitter in 1965 at the Merck Rahway plant, was he not?

A. Yes.

MR. PLACITELLA: Mark that P-16.

(The above document is marked P-16 for Identification)

Q. You have in front of you P-16, which was one of the articles published by the New York Academy of Sciences where Mr. Merck was on the board of trustees, talking about the disease mesothelioma. Do you see that?

A. Yes, I do.

Q. And I tagged a page with a green sticker.

MR. SEAVER: Actually, I think it is blue.

A. Yes. I was just reading.

Q. Take your time.

A. Selikoff on a preceding page.

Q. Take your time.

A. Go ahead.

Q. This article, and this is publication is by Dr. Selikoff, that's the same Selikoff that you said his people came to Merck in the early '70s,

right?

A. I believe so, yes.

Q. This article, if you look at where the green sticker is, talks about people getting mesothelioma who worked as inisulators, boilermakers and pipefitters, correct?

A. The discussion, or the gentleman by the name of Eisenstadt from Port Arthur, an oil refinery town, talks about, yes, asbestos disease mesothelioma and fiberrocarcoma, mislabeling these diseases as fibrocarcoma.

Q. The next page talks about the people who were getting it and they say insulators, boilermakers and pipefitters, right?

A. Correct.

Q. That is what Mr. Chavan was doing in 1965, right?

A. He was a pipefitter.

Q. And what was essentially -- he also did some insulating work, did he not?

A. Sure.

Q. And he also worked on some boilers, did he not?

A. I would presume so, even though he was in research, it was a plant-wide craft.

Q. Now, Dr. Selikoff and the New York Academy of Sciences, of which George Merck was a trustee,

also published that family members of asbestos exposed workers could get mesothelioma in 1965, true?

A. I don't know. Is it in here?

Q. I'll give you another one.

A. Okay. I would remark, there's another paragraph here. In a few of our proven cases of malignant mesothelioma, we have not been able to establish the presence of asbestosis. It seems like there's still some uncertainty as to cause and effect, but it is just on a quick read.

Q. That's because you didn't need to get asbestosis to get mesothelioma, right?

MR. SEAVER: Is that a question, Chris, or is that just a statement for the record?

MR. PLACITELLA: A question.

A. I don't know.

PLACITELLA: Mark this next.

(The above document is marked P-17 for Identification)

Q. You have a front of you P-17, which is another article appearing in the publication by the New York Accademy of Sciences, of which George Merck

was on the board of trustees in 1965. Do you see that?

A. Yes.

Q. In making your statement that Merck didn't know about the dangers of asbestos, were you ever shown this article?

A. No.

Q. And does this article in fact talk about wives and children of asbestos exposed workers coming down with mesothelioma? I tagged it for you.

MR. SEAVER: For the record, it is an 11 page document. You are asking the witness a question about a document he is seeing for the first time.

Q. Do you see the first tab?

A. It talks about exposure of relatives.

Q. I put it up on the screen to make it easy. Experted. Does it say there seems little doubt of a risk of both occupational and domestic exposure to asbestos? Do you see that?

A. Um-hum.

Q. It also talks about people who were getting mesothelioma from washing their husband's clothing?

MR. SEAVER: Objection to the form. The

documents says what it says.

Q. The most usual history was that the wife who washed her husband's dungarees or work clothes,

correct?

A. Yes, but it also says, you know, it is centered on the study in London in U.K and these people were working in asbestos mines. One could speculate about the amount of exposure and the difference in the amount of exposure between the mechanic, pipefitter and somebody actually mining the substance.

Q. Well, we know from the publications we have seen so far that it was documented in the New York Academy of Sciences publication of 65 that pipefitters were getting mesothelioma, correct?

A. Um-hum.

Q. It is also documented that children of asbestos exposed workers were getting mesothelioma. You want to qualify it by saying they were miners.. Children are miner, right?

MR. SEAVER: Objection to the form, counsel. The document says what it says.

Q. Let me ask you the question this way. You are aware that Mr. Chavan, John Chavan's wife washed his work clothes?

A. In my discussions with counsel I have been told that, yes.

Q. You know she died from mesothelioma, do you not?

A. No. I don't know her.
Q. Did you know his son had mesothelioma?
A. Yes.
Q. Did you know his other son has asbestos poisoning from Merck?
A. I'm not aware of that.
Q. You don't know that John, Jr. also has asbestos poisoning?
MR. SEAVER: Objection to the form.
A. No.
Q. Do you know what the Industrial Hygiene Foundations is?
A. I'm not familiar with that group.
Q. Do you know that in 1968 Merck published in its own manual that you could get cancer from asbestos and listed the very products that Mr. Chavan worked with as potentially hazardous?
MR. SEAVER: Counsel, for clarification, in light of the earlier testimony, we are talking about the Merck Manual of Diagnostic?
MR. PLACITELLA: Fair enough.

A. This is the index. That's what I was thinking about.
MR. PLACITELLA: Mark this next.
(The above document is marked P-18)

Q. You have in front of you an excerpt from a publication. Can you tell me what the publication title is?

A. This is actually the one we were cofused about earlier. S this the Merck Index.

Q. What is the Merck Index?

A. The Merck Index is a compendium of characteristics associated with a huge variety of chemicals. As I say, like an abbreviated encyclopedia for chemists and chemical engineers..

Q. This is from 1968. In the context of what Merck knew and should have warned about, does it indicate what asbestos is capable of causing in this 1968 manual?

A. The quote is "Toxicity, prolonged exposure" -- you'll have to forgive me, there's a production stamp on it. "to the dust can result in pulmonary fibrosis. asbestosis, emphysema and lung neoplasma"

Q. That's cancer, right?

A. Correct.

Q. And what products, kinds of products does it list above that in terms of asbestos-containing products?

A. Insulator cement furnace and hot pipe covering rings, filter media, fireproof gloves,

clothing, brake linings.

Q. Some of the very same products that Mr. Chavan was encountering in his work as a pipefitter in 1968, correct?

A. Correct.

Q. Now, in 1971 OSHA is passed, correct?

A. Yes.

Q. And you indicated that at some point in '72 or '73 Dr. Selikoff came in?

A. A representative from his group, this fellow Schwartz, correct.

Q. Now, what was done by Merck between 1971 and when the people from Mt. Sinai came in when OSHA was passed in 1971 and people from Mt. Sinai came in, to alert the people in the plant about the dangers of asbestos?

A. I don't recall any specific, gosh, actions or changes in procedures at that point in time.

As I said before, my experience through a sea change in the way asbestos and the hazards

associated with it was regarded after the Selikoff visit and the attention that was focused on that substance.

Q. You called it the Selikoff visit. The Mt. Sinai people

A. Yes.

Q. How many people came?

A. Oh, gosh, two or three, but that is a very vague recollection.

Q. Do you know the circumstances under which they came?

A. I'm not familiar with what triggered the visit, precise reasons for it. I believe that there were -- I'll back up. Medical conditions by their nature are confidential, but I believe that there was some symptoms shown by some of our employees.

I'm not sure if the union precipitated the visit by preaching out to Selikoff or how that worked. What I can say is folks from his group came to the site, looked at the way we worked with asbestos, looked at the factory environment and subsequent to that our procedures were drastically tightened up.

Q. So you don't have information, specific information about why he came?

A. No, I don't

Q. Was there any type of memo generated specifically about the visit?

A. Not to my recollection.

Q. What did they find when they came to the Merck plant, the Mt. Sinai people?

A. If my recollection is correct, we disvovered that several of our employees had, whether it is called asbestosis or mesothelioma. I believe it was asbestosis, and speaking as an individual employee, I was surprised.

Q. Well, there were things, for example, known to the safety and perhaps the medical department about what was going on with employees that you wouldn't be privileged to because it wasn't your job to know and you shouldn't know, correct?

A. Correct.

Q. For example, were you aware that in 1968 Merck had already had information that Mr. Chavan, Sr. had fibrosis in his lungs?

A. No.

Q. Would that surprise you to know that beginning in 1968 the Merck medical department was tracking the changes in Mr. Chavan's lungs?

A. Well, surprise is not -- how would I say

this? In one sense fibrosis seems like a progressive, a slowly progressive situation. I wouldn't be surprised if he hadn't beeen diagnosed in '72 or '73 with some sort of impaired lung function that there would have been some evidence of it prior to that. So, on one hand I'm not

surprised, but again, I'm not just not knowledgeable of the specific case, and I shouldn't be.

Q. I want to show you an excerpt from Mr. Chavan's Merck medical file.

MR. PLACITELLA: Mark that P-19.

(The above document is marked P-19 for Identification)

Q. You have in front of you P-19 for Identification. Do you recognize the format of this document?

A. No. I have not seen it, but obviously a Rahway Hospital document. I guess from the radiology department.

Q. And do you know who a Dr. Osborne was?

A. No.

Q. Does it indicate that Mr. Chavan, in 1968, had an x-ray for a possible broken rib?

A. I see down, impression, linear fracture of the right ninth rib and mild inertstitial lung

fibrosis.

Q. Do you remember you told me before that when there's an accident at Merck that's where they would send their people, to Rahway Hospital?

A. Um-hum.

Q. So here Rahway Hospital told the doctors at Merck that Mr. Chavan had interstitial lung

fibrosis. Do you see that?

A. Yes. Mild interstitial lung fibrosis.

Q. Any indication that you have ever seen in Mr. Chavan's medical file that he was advised of the results in 1968?

A. As I say, I've not seen this medical file nor am I familiar with the interchanges between the MDs and Mr. Chavan.

Q. Can you tell me how long it took Merck to advise Mr. Chavan that he had asbestosis?

MR. SEAVER: Objection to the form.

A. I certainly can't.

Q. Do you know whether Mr. Chavan was one of the people that Dr. Selikoff's group determined to have asbestosis?

A. I don't. I don't know the specific individuals involved.

Q. You are aware that after Dr. Selikoff

visited Merck, John Chavan, Sr. visited the medical department complaining of difficulty breathing?

A. Again, I'm not knowledgeable of any interchanges between Mr. Chavan and the medical department.

MR. PLACITELLA: Mark this P-20.

(The above document is marked P-20 for

Identification)

Q. You have in front of you P-20, which is the July 3,1975 memo from Employee Health, Dr. Foldy. Who is he?

A. Steve Foldy was, I believe, the head of the local employee health function at Rahway.

Q. And who is Dr. David Kirk?

A. Well, it is Mr. David Kirk. Dave is the industrial hygienist. He came on board in 1972, 1973.

Q. And the subject is pipefitters?

A. Subject is pipefitters and it is medical establishment reaching out to the safety or industrial hygiene establishment asking for basically sort of a job description of what these pipefitters do on a daily basis.

Q. And that included Mr. Chavan, right?

A. Presumably.

Q. And this doctor, after Dr. Selikoff visited, says x-ray results with nonspecific findings, right?

A. Correct. They take annual x-rays, chest x-rays.

Q. And there's nothing in there about asbestosis, correct?

A. Correct. It is non specific findings and

it conveys the impression that the medical establishment felt that this group's exposure to asbestos was minimal.

Q. But we know that's not so from other documents we saw where it said it was in some cases clouds of dust for up to ten minutes, correct?

A. Minimal is not exactly a well defined characterization of exposure.

Q. Now, who is Dr. Urbanski?

A. I would have to see the memo in context. I might be able to help.

MR. PLACITELLA: Mark that P-21.

(The above document is marked P-21 for Identification)

(Recess taken)

Q. You have in front of you P-21, August

20,1975 report from a Dr. Urbanski.

A. Yes.

Q. Do you know who he is?

A. I don't, but it sounds like he would be a third party physician to whom we would refer employees.

Q. And he issued a report to Dr. Foldy?

A. Foldy was the doctor at Merck, yes.

Q. Was he in the medical department?
A. It says -- yes.
Q. And he comes to a diagnosis, correct?
A. I'm getting there.
MR. SEAVER: Are you referring to what he says as an impression?
MR. PLACITELLA: Yes.
A. Mild chronic bronchitis, bilateral moderate interstitial changes in all lung zones.
Q. And above that he says, he has pneumoconiosis. Do you see that?
A. It says employing the Cincinnatti classification of pneumoconiosis the x-ray can be best classified as small capacities, irregular profusion.
It says they are employing a particular way of classifying the x-rays. I don't know if that

constitutes a diagnosis or not.
Q. Nothing in this report in 1975 about asbestosis or asbestos-related disease, correct?
A. Asbestos is not mentioned, nor is asbestosis.
MR. SEAVER: Other than the first paragraph it reference his work history.
A. Yes.
Q. Patient claims to have been exposed to

asbestosis, fiberglass foam glass in his work.

MR. SEAVER: I think we can all conclude the doctor meant asbestos, not asbestosis.

MR. PLACITELLA: Yes.

Q. Do you have any idea from your research as to why in 1975 that Merck Medical Department seems to be avoiding using the word asbestosis?

MR. SEAVER: Objection to the form. The letter is not from the Merck Medical Department. It is to the Merck Medical Department.

A. Correct. I wouldn't speculate whether they are trying to avoid it or not, to fell you the truth. I'm not a doctor so I can't read too much into the way it is written.

Q. Ultimately you are aware that Mr. Chavan filed a Workers' Compensation claim for exposure to

dust at work?

A. Yes.

Q. And how are you aware of that?

A. Through discussions with my attorney.

Q. I don't want you to tell me anything you talked to him about. Did you see anything? A document or anything?

A. Just the documents in the record that he was one of the 14 or 20 pipefitters that, gosh, was

part of the settlement.

MR. PLACITELLA: Mark that P-22.

(The above document is marked P-22 for Identification)

MR. SEAVER: Do you know the date of this document? It is cut off.

MR. PLACITELLA: I believe it was 3-20-78.

(Discussion off the record)

MR. SEAVER: For the record he put the date '78 on the document.

MR. PLACITELLA: Okay.

Q. That is a judgment from the Workers' Compensation Court for John Chavan?

A. Yes.

Q. And the first page indicates he has chronic bronchitis, correct?

A. That's correct. 15 percent PT chronic bronchitis.

Q. And that is consistent with the diagnosis given by Dr. Urbanski, is it not?

A. Chronic mild bronchitis, correct.

Q. So, ultimately there's a judegment in the Workers' Compensation claim, correct?

A. Roughlyh three years later, yes.

Q. And have you seen anything in the files that you reviewed in preparation to indicate that

between the time Dr. Selikoff visited the Merck facility, or his people visited the Merck facility, and 1978, that Mr. Chavan was ever told he had asbestosis?

A. I have not seen any documents to that effect.

Q. Are you aware that at some point Mr. Chavan actually went for a lung biopsy?

A. No.

MR. PLACITELLA: Mark that P-23.

(The above document is marked P-23 for Identification)

A. This is a very familiar form.

Q. How so?

A. When you went to plant health this was the form that you would carry in to give the doc. Basically, excusing you from work for a while.

Q. This would have been a form that Mr. Chavan actually carried in when he went to see the Merck doctor, from your practice?

A. Yes.

Q. It indicates this was after his Workers' Compensation award for chronic bronchitis?

A. This was the chronic bronchitis award was

3-20-78 and this is August of '78, yes.

Q. And he went in and he got a chest x-ray?

A. Correct.

Q. And is there any indication on this form that he was told that at that point that he had asbestosis?

A. Well, there's a check in the box calling it a non occ base.

Q. It says non-occupational right?

A. Right.

Q. Meaning whatever he got didn't come from work?

A. Presumably.

Q. Do you have any idea why they would put in his form that whatever he had wasn't work related?

A. Just looking through the form, there's nothing that stands out.

Q. You know that Mr. Chavan eventually retired on disability from Merck?

A. Yes.

MR. PLACITELLA: Mark these.

(The above documents are marked P-24 and P-23 for Identification)

Q. If the patient was diagnosed with a particular injury or disease, would it normally appear on the form as part of Merck's practice?

A. I'm not sure, to tell you the truth. I've seen the form very often, but just for periodic blood tests for myself. I didn't know and don't know what the docs would write on it.

Q. What was last document I gave you?

A. 24 dated January 23, '79.

Q. Tell me what this is?

A. This is a slip that apparently records a visit to Rahway Hospital for a biopsy of the right lung. It says he was hospitalized for a month, had a series of chest x-rays. I'm having a hard time making out some of the writing. Lung scan. Seen by Dr. Rosenzwieg. Hal was the then head of the local medical practice. Has approved doctor's note. Then

there's some blood pressure and whatnot, like that, and it notes will try to work. It is still marked as non-occupational.

So this, based on my experience, would be an employee coming back after having some work done that was ostensibly not work related and this would be a ticket used to -- this would be handed -- well, a blank form without the medical information would be given to a supervisor authorizing him or her to come back to work.

Q. He came back after apparently he had a

lung biopsy?

A. That's what it looks like to me.

Q. Does it say above that that -- does the asbestosis appear on the form above that?

A. It says pulmonary fibrosis, pulmonary -- okay. Pulmonary embilism probably due to asbestosis.

Q. Asbestosis?

A. Correct.

Q. That is the first indications I could find on any Merck medical form indicating that he had asbestosis. Are you aware of any before that that I missed?

A. No.

Q. And they called it non-occupational?

A. Yes.

Q. And then they said you could go back to work, right?

MR. SEAVER: Objection. The form says what it says. It says will try to work.

Q. He wants to go back to work?

A. There's a box checked. Back to work assigned, previous to absense. It is a procedure where if the union employee goes out, they have to be cleared back to work and that's what this did.

Q. Shortly thereafter he retired on

disability, right?

A. I'm not knowledgeable of the retiring date.

MR. SEAVER: Counsel, we already established Mr. Higgins did not review Mr. Chavan's medical records.

MR. PLACITELLA:l Okay. Mark this 25.

(The above document is marked P-25 for Identification)

Q. This is August 25, 1980 memo from Mr. Chavan's Merck file. Have you seen memos like this before?

A. No, I can't say that I have. Not having

access to medical files, of course.

Q. This indicates at this time in 1980 he was 59, correct?

A. Yes.

Q. And it says he has a long history of exposure to asbestos, right?

A. Oh, yes. Okay.

Q. And then it says apparently he has been followed by the company physician with a history of pulmonary fibrosis, correct?

A. Yes.

Q. It does not say the company first

physician told him had asbestosis, does it?

A. It does not.

Q. Would you agree with me that there were people at Merck who, when they personally were made aware of the dangers of asbestos, tried to do the right thing?

A. Yes.

Q. That recommendations were made in the early '70's, by people that cared, to stop using asbestos in the plant?

A. Again, I would agree after the Selikoff, or after the Mt. Sinai visit, we began to look very hard at asbestos, began the work of obtaining an

inventory, stopped bying asbestos-containing materials, et cetera, et cetera.

Q. Well, do you know who Mr. Levine is?

A. Is it H. Levine?

Q. Yes.

A. Howard Levine ended up as a senior vice-president in human resources, but he began as a site trainer, if I remember correctly.

Q. In his deposition he indicated he didn't believe there was an asbestos safety policy at Merck Rahway until about the mid-'70s. Are you aware of that or does should sound about right?

A. Again, sounds about right. It lines up

pretty well with the Mt. Sinai visit, after the Mt. Sinai visit.

Q. From my review of the documents it looked like Merck came up with a manual for handling asbestos around 1974, correct?

A. That sounds just about right.

Q. And when was the first time you are aware that Merck actually gave safety training to its employees on how to handle asbestos?

A. It would have been when that procedure, if I recall correctly, I'll back up a little bit. There's a book of safety procedures for the site.

And what I saw in one of the prior exhibits was that 1974ish procedure which included a permit for working with asbestos, and that would have been promulgated, those two things, the permit and the procedures, would have been promulgated by safety talks.

Q. Am I correct until about 1974, 1975 Merck never provided any warning to any employee at the Rahway facility about the dangers of asbestos and how to protect yourself?

A. Welll, as I testified before, asbestos was regarded in the same way as working with any dust generating material. Wood, fiberboard, those kinds

of things. So, I don't recall it being called out as a special hazard.

Q. So am I correct that before the mid '70s there was no specific warning issued by Merck to anyone on the premises about the dangers of working with asbestos?

A. Not that I'm familiar with.

Q. Now, even after there was a manual in place there continued to be lapses within Merck over protecting employees health when it came to asbestos, correct?

MR. SEAVER: Objection to the form.

A. I would have to characterize the situation as needing to change longstanding practices. Those things don't -- you can publish standards and procedures like turning a switch.

Particularly with the Rahway -- Rahway mechanics can be difficult to -- how would I say-- to get to comply with every new standard. It takes a bit of time to actually make that standard fully in effect in the workplace.

Q. But there were clear failures on the part of Merck management, not the employees, some seven, eight years after OSHA was in enacted, true?

MR. SEAVER: Objection to the form.

A. You would have to show them to me.

Q. Well, for example, OSHA came in on a number of occasions as late as 1979 and actually sited Merck for failing to train and warn employees about the dangers of asbestos, true?

A. I don't know.

MR. PLACITELLA: Mark this P-26

(The above document is marked P-26 for Identification)

Q. You have in front of you P-26 for identification?

A. I do.

Q. Do you recognize the form?

A. I do, as well as who it was issued to. It was my boss at the time.

Q. Who was your boss?

A. Stan Newsome.

Q. And what was his job?

A. He was the overall manufacturing manager. He ran half the plant and I ran the other half at this point. This citation is relative to fit testing, the way the respirators were fit tested. As you I'm sure you know you amil nitrate oil to do that. Facial hair can Interrupt.

Q. Was this 1979?

A. Correct.

Q. Eight years after OSHA?

A. Yes.

Q. And did it talk about, and this was an OSHA citiation?

A. This is an OSHA citation for not providing individuals the opportunity to wear a respirator and test atmosphere.

Q. Does it talk about failure to train employees in the use of respirators in an asbestos environment?

A. I'm sorry, I haven't seen asbestos here.

Help me. Becaue respirators are a general class of protective equipment. And they protect agains solvents vapors as well as dust. It is not -- I can't discern whether this was, gosh, related to inappropriate fit testing for benzene or methenao acitone or asbestos. It is nonspecific.

MR. PLACITELLA: Mark this 27.

(The above document is marked P-27 for Identification)

A. Is there a date on this?

Q. Do you recognize the form again?

A. Yes.

Q. Do you see in the lower right hand corner -- I couldn't find the date. But do you see in the lower right hand corner it talks about the

date of the form?

A. Yes. Revision date 1-84

Q. So it would have happened at least January 1, 1984?

A. Correct.

Q. And can you tell me what this is about?

A. Charlie Branard in those days was a supervisor, first line supervisor of mechanics.

Q. He was the guy in charge of supervising people like Mr. Chavan?

A. Yes. Pipe coverers, pipefitters and folks like that.

Q. This is a citation again from OSHA?

A. Well, it's an alleged safety citation and it alleges they were exposed to asbestos as a result of not using protective equipment. I don't know how this was settled and whether the allegation was correct or not, based on this document.

Q. It says the employees were not cautioned or warned about asbestos contamination, correct?

A. Yes.

Q. It also says they were specifically told by Merck that there was no hazard, doesn't it?

A. That's correct. But it alleges. Where is the subsequent -- subsequent to one of these notices

there's an adjudication procedure at which point itis either proven or disproven that the allegation is correct. We have not been present with the conclusion of this.

Q. I'll make you a deal. If we take a break and Mr. Seaver can show me how it ended up, I'll put it in front of you. I don't have it. Right now I only know what happened based on this document.

Now, as I indicated, I think before, there were people at Merck who took their jobs in safety

seriously?

A. True.

Q. They wanted to do the right thing, correct?

A. Yes.

Q. They urged others to do the right thing, correct?

A. Um-hum.

Q. But Merck didn't always do the right thing, did it?

A. I wouldn't say that. You have to show me some documentation to back that up.

Q. Okay. As soon as Dr. Selikoff left, there were people at Merck that said you, Merck, need to protect the workers' families from asbestos, not just the workers, correct?

A. I can't say that I remember a dialogue long those lines, but you would have to first recognize concerns about material being brought home.

MR. PLACITELLA: Mark this P-28.

(The above document is marked P-28 for Identification)

Q. You have in front of you P-28, which is a memo 1-25-74?

A. Yes.

Q. From Mr. Doremus?

A. Right.

Q. Subject, asbestos?

A. Um-hum.

Q. He is the same Mr. Doremus who was a member of the American Industrial Hygiene Association that we saw back in 1958, correct?

A. Yes, Ken Doremus.

Q. And in this memo he urges Merck to do a number of things, correct?

A. Correct.

Q. He says, the first thing we should do is get rid of all the asbestos that we can. New asbestos, right?

A. Elimination or repair. Oh, execuse me.

Elimination of repair or construction materials, yes.

Q. He said first and foremost, I'm interpreting, let's get rid of the asbestos, right?

MR. SEAVER: Objection to your interpretation, but you are entitled to it.

Q. That is the first thing he says in his memo.

A. Yes. It is a recommendation, but how

would I say this? With 10 miles, 8 miles of asbestos pipe one doesn't eliminate that immediately, and as I'm sure you are aware there's always a debate between encapsulation or cateloging first or inventorying and then encapsulation or removal.

Q. I understand. What he is saying is he is not talking about removing dealing with the stuff that's in place yet, he is just saying let's not buy it anymore.

A. Fair enough.

Q. And he says we shouldn't be buying pipe covering, right?

A. Um-hum.

Q. And we shouldn't be buying sheet and rope packing, correct?

A. Correct.

Q. And gasketing?
A. Transite, et cetera.
Q. And transite, et cetera, right?
A. Um-hum.
Q. That was 1974, right?
A. Correct.
Q. Well, six years later you were still purchasing the same asbestos products and using them

in your plant in 1980, weren't you?
A. Not that I'm aware of.
Q. We are going to get there.
Does he say that you should avoid contact of asbestos-containing materials with clothing?
A. Yes.
Q. And that you should provide showers and changes of clothes?
A. We provide showers. We provide time to shower and we provide changes of clothing to all of our employees engaged in hourly work and first line supervisory work.
Q. Well, the only people you gave time to shower, and you only gave them ten minutes, were the pipe coverers, not the pipefitters, right?
A. No. I recall shower provisions in the union contract going way back.

Q. Why is it then that you made a discretionary about who got the change of clothing and how much time they got to take the showers and only the pipefitters -- rather only the pipe coverers got that benefit?

A. I would have to go back and look at the union contracts. Gosh, as long as I can remember chemical operators, first line supervisors,

basically all hourly people had time to shower and change.

We would have to back and look at when -- if that provision changed over the years.

Q. You told me before, did you not, that people like Mr. Chavan continued to be involved with asbestos through the '70s and into the 1980s, correct?

A. They would have been involved in it because it was in the plant.

Q. And they would have removed it?

A. Again, small amounts incidental to their work as a pipefitter, but they would not be undertaking large projects to remove it.

MR. PLACITELLA: Mark that 29.

(The above document is marked P-29 for Identification)

Q. This is a memo, P-29, dated 10-15-75?
A. Um-hum.
Q. That was almost what, two years after the previous memo urging --
A. '74, '75, yes. It says we stopped buying asbestos insulating materials.
Q. But it was about two years after

Mr. Doremus urged no more buying insulating material and please protect people from bringing asbestos home on their clothing, right?
MR. SEAVER: The is question is that the date of the second memo?
Q. About two years after that.
MR. SEAVER: January '74 to October '75 is whatever it is.
Q. And this is from a J. J. Jackson. Who is he?
A. Joe Jackson was a mechanical, what was called a superintendent. He would be an individual that first line supervisors reported to. Dave Conklin, D. A. Conklin was the plant manager.
Q. D. A. Conklin was the guy who ran the plant?
A. Correct.
Q. He ultimately was your boss?

A. Yes.
Q. And can you go down to the third paragraph?
A. I'm there.
Q. Does it say pipe coverers are given ten extra minutes at the end of each workday to allow for shower time?

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A. Ten extra, but I think if you read the contract, everybody had a shower time incorporated in the contract.
Q. But the only ones who got the extra time to get rid of the asbestos on their body were the pipe coverers, and they only got ten minutes, right?
MR. SEAVER: Objection to the form of the question.
Q. That is what the document says.
MR. SEAVER: You are mischaracterizing what the witness said.
A. I think what this says is it doesn't imply that anybody else didn't get uniform changes. It doesn't imply nobody else got shower time. To me it is a recognition that the pipe coverers -- how would I say, because they would potentially be exposed to greater concentrations of asbestos over a longer period of time in the course of their normal work, were accorded extra privileges above and beyond what

the regular employees, yoiu know, quot unquote regular employees were afforded.

Q. So tell me when is the first time that Merck warned people like John Chavan that they should take showers and change their clothes at work because if they do so they could kill their family

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members?

A. I've already said I'm not familiar with exactly what was said to Mr. Chavan in that regard, and other like employees.

What we did was, what the company did was change the procedures to avoid exposures and what the company, over the years tried to do, was to have mechanics change the clothing at the company, use the showers for the purpose they were designed, to prevent carryover from going home.

And I would also say mechanics, and I don't know if Mr. Chavan's attitude in this regard, and some employers can be very reluctant to spend the time in the shower room as opposed to getting home ten minutes earlier.

Q. What I want to know is what information do you have that pipefitters, like Mr. Chavan, were ever warned that they needed to take showers in order not to expose their wives and their children

to the asbestos they were exposed to at work?
A. You would have to go back and look at the safety talks that were presented in those days. I'm sure those records don't exist. But over the years managment has urged people, hourly people, first line supervisors, to take the time accorded in the

contract to shower and change their uniforms.
Q. Is there a difference between saying shower and change, you can shower and change or if you don't shower and change you could kill your wife and children?
A. I don't know the precise verbage used in the safety talks, but the emphasis I'm familiar with has been for a very long period of time that you should shower, change clothing at work, leave the work uniforms at work so as to avoid carrying home whatever the chemicals or substances you were working with at the plant might be in those clothes.
Q. And what documentation do you have that Mr. Chavan, Sr. was told that if he didn't change his work clothes at work and take a shower he could potentially kill his family?
A. I don't -- we don't have any documentation of those that I'm aware of, of those safety talks.
Q. Do you have any evidence as you sit here today that Mr. Chavan was ever told, given the fact

he was still working around asbestos into the 1980s, that he had to change his clothes and take a shower or his wife and his children were at risk of getting sick and dying?

A. Only the general talks that were presented

to our employee based people that I'm familiar with personally. Mr. Chavan is not among them, but it was, has been a struggle for years to have employees take the time to shower, change their clothes, get into street clothes and then go home.

Many employees -- it is very difficult to enforce. Many employees would go directly home despite those kinds of safety talks.

Q. So you think if you would have told Mr. Chavan that he should have have warn -- he should have changed his clothes and took a shower in order to avoid placing his family at risk, he would have ingnored that?

A. In my experience, yes. The want to shortcut the day and get home that ten or 20 minutes earlier, is a powerful driver for behavior and it was and has been very difficult to change that pattern.

Q. So, it is Merck's position that even if they told Mr. Chavan that he could kill his family

over 20 minutes geting home earlier, he would have ignored the warning and done it anyhow?

MR. SEAVER: Objection to the form.

A. Right. What I've said was we've talked to employees over the years, most recently in my stint

as plant manager about being careful with your clothing, leaving it at work, taking the time to shower. Short of having a guard with a gun in the locker loom, it is very difficult to enforce that behavior. And I have to admitt, unfortunately this issue persists even now after all these years and many, many safety talks long these lines. Leave the chemicals, leave the substances the the work place, don't bring them home.

Q. So your testimony is that Mr. Chavan would delibrately put his family at risk in order to get home 20 minutes earlier?

A. My testimony is not specific to Mr. Chavan. My testimony is specific to a large group of employers and what I observed as their behavior and have observed as their behavior over well my 40 years.

Q. If you thought that was so, and you thought they wouldn't follow general directions, then why didn't you make it a requirement that you could not leave the plant in the work clothing you

22 came to the plant in?
23 MR. SEAVER: Objection to the form.
24 A. As I said, we tried to enforce that
25 particular rule and those contractual allowances
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1 that were provided because of this particular
2 concern, and short of putting a guard with a gun in
3 the locker rooms to ensure the people changed their
4 clothing, which is obviously not very practical, it
5 has been very, very difficult to ensure that
6 100 percent of ouremployees changed their clothes
7 before they go home.
8 Q. It wouldn't have matered that you put a
9 guard there with a gun in the locker room because
10 the locker room was already contaminated, right?
11 MR. SEAVER: Objection to the form.
12 A. One instance from how many years ago?
13 Q. It didn't matter?
14 MR. SEAVER: Objection to the form.
15 Argumentative.
16 Q. So, tell me exactly what Merck's program
17 was knowing that you thought people wouldn't pay
18 attentions to your warnings to stop people who you
19 knew were carrying carcinogens home on their
20 clothing from carrying those clothes home to their
21 families?

MR. SEAVER: Objection.

Q. What was your procedure?

MR. SEAVER: Objection to the form. Can we please have a time frame on when this question

covers over a 50 year period?

Q. During the time Mr. Chavan, Sr. worked there.

MR. SEAVER: Again, we are talking about thirty to forty years. Could you be more specific?

Q. Any time. Tell me any time up until 1980, when he retired, what you did, you, Merck, to make sure that he did not bring carcenoginic laden clothing home to his family because you didn't think that he would listen to you anyhow?

A. We provided the information to employees. We provided the facilities. We provided the time to employees. We provided safety talks that urged them to avail themselves of the facilities and the time that was contractually provided to change clothes and leave the clothes at home -- rather leave the clothes at the workplace to have then laundered at workplace. Not all of our employees followed those guidelines. We did the best we could from a practical perspective.

Q. According to this memo in 1975, and then I want to get to 1980, it indicated, did it not, that

the only people who were given extra time to shower and change their clothes were the pipe coverers?

MR. SEAVER: Objection. Asked and

answered. Argumentative. The witness already testified to his understanding of what that language meant.

A. It describes extra entitlement above and beyond the normal shower and change time and it just merely states that they are using this respirator.

Q. That, according to this memo, was not extended to the pipefitters, even though they were exposed to asbestos --

A. I would not read that in at all.

MR. SEAVER: Objection to the form. That is not what the document says because when he talked about the respirators it talks about the mechanics. If your question is more specific than that, please ask a more specific question.

Q. It says the only contact mechanics now have with asbestos-bearing insulation materials occurs when removing or repairing previously installed insulation of that type, correct?

MR. SEAVER: Whenever works occurs on asbestos bearing insulation dust producing material, as the witness said before.

A. These respirators are warn. It should have been end of paragraph. Now, there's some special stuff associated with pipe coverers. The

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first sentences deal with the entire mechanic population, okay?

Q. But only pipe coverers get the extra --

A. The extra ten minutes to shower. That's correct .

Q. Now, when did you start the asbestos safety talks with the people in the plant?

A. I believe when those -- that permit was promulgated and the procedure, corporate safety procedure number 1 was issued.

In the materials I was given to look at unfortunately I could not find a specific date on that policy, which was kind of frustrating. It would have been, I would congecture it would have been '74, '73. In that range.

Q. Who was Mark Levine?

A. Are you sure it is not Howard?

MR. SEAVER: It is Mark.

A. If you showed me a document I might be able to congure up a memory.

MR. PLACITELLA: Let's take two minutes.

(Recess taken)

MR. PLACITELLA: Mark this as 30.

(The above document is marked P-30 for Identification)

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Q. I'm going to show you what's been marked P-30 for Identification. Is this the asbestos safety talk that we referred to?

A. Do you have a date on this by chance?

Q. No. Unfortunately this is the way it was given to me.

A. Okay. It has a date fairly far back. Dr. Foley is referenced.

Q. And that would have been when?

A. The '70s.

Q. In the '70s?

A. Yes.

Q. And can you look at number 5? Take your time.

A. I would like to read it before I got to the part your are interested in.

MR. SEAVER: A little intellectual curiosity is not a bad thing.

A. Especially him.

Okay.

Q. Do you want to look at the whole document?

A. No, no, I'm good now. That's okay.

Q. Number 5 says for pipe coverers only,

correct?

A. That's correct.

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Q. A daily change of work clothing has been authorized for this group in order to minimize exposure to asbestos dust, correct?

A. That's correct.

Q. And then number 6 says showers will remain a supervisor's prerogative, but their value is recognized following any significant exposure to asbestos or other materials causing body irritation, correct?

A. Correct. Now just --

MR. SEAVER: Let him ask a question.

Q. The memo then goes on in different places to talk about other protections that are available to people exposed to asbestos in the plant, whether or not they are pipe coverers, correct?

A. Yes Respiratory protection, et cetera

Q. There's nothing in this document that indicates that pipefitters will be given a daily change of work clothing, is there?

A. No. What I was going to say, there was a practice in the '70s, and at that time I was responsible for chemical operators, in some cases say chemical operators were given three days of clothing or three changes per week. The idea being

25 that you hang your stuff up and wear it the next day
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1 and every other day you throw it in the laundry.
2 That could have been the case with regular mechanics
3 or non pipecovering mechanics, but I'm not familiar
4 with the frequency of fewer than three changes per
5 week.
6 Q. This document doesn't say any of that,
7 does it? It says for pipe coverers only. They are
8 the only ones that get a daily change of work
9 clothes. Isn't that what it says?
10 A. No. It says a daily change has been
11 authorized for this group in order to minimize
12 exposure. It is silent as far as the rest of the
13 groups.
14 Q. And then below it, it is up to the
15 supervisor about who gets showers, according to this
16 document, right? It is his prerogative?
17 A. That's correct.
18 Q. It didn't say anything about holding a gun
19 to somebody's head, does it?
20 A. What I said was in order to get everybody
21 to shower, we would have to do that.
22 Q. It is not even mandatory, according to
23 paragraph 6. It says it is the supervisor's
24 prerogative, correct?

25 A. According to this document, that's the

1 case.

2 Q. Now I'm going to show you testimony from

3 Mark Levine, who was also a Merck witness, about the

4 shower policy at Merck from 2005. And I blocked it

5 for you.

6 Could you read the question and answer

7 that Mark Levine gave about shower policies at

8 Merck?

9 A. Now I want to -- my question is a little

10 broader. I will walk --

11 MR. SEAVER: I'm going to object to the

12 question because it stops too soon. The testimony

13 went on to clarify that Mr. Levine was referring to

14 contractors, not employees. So this is not a fair

15 representation.

16 MR. PLACITELLA: Do you have the whole

17 thing?

18 MR. SEAVER: I don't have it with me, but

19 I know what the testimony is.

20 MR. PLACITELLA: I wouldn't ask the

21 question based on your representation.

22 MR. SEAVER: The question at the bottom of

23 the page --

24 MR. PLACITELLA:l Ed, I'll take your

25 representation that's that what it says so we don't

have to fight over it.

MR. SEAVER: Thank you.

Q. In 1974, we established that Mr. Doremus called for the elimination of buying anymore gasketing, rope and sheets, asbestos sheets, correct, and transite?

A. Correct.

Q. It wasn't until the end of the year in 1974, almost 12 months later, that Merck established a policy for stopping buying asbestos insulation materials, correct?

A. I don't know that for a fact.

Q. Do you have P-29 in front of you?

A. I have P-29 here. Thank you. It is the same document. Okay.

MR. SEAVER: Is that the Jackson memo to Conklin?

Q. 10-15-75. Second page. Are you on the second page?

A. Yes.

Q. Does it say, even though Mr. Doremus said in 1974 that they shouldn't use asbestos gasketing or rope or sheets anymore, that Merck was going to continue to use it anyway because they didn't have any other kind of materials to use?

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A. What I would derive from this, if I'm permitted to. I read into this a little bit. It sounds to me, or looks to me, that the vast majority of asbestos materials, gosh, the easier ones to substitute, if you will, pipe covering, blocks that would be used to insulate vessels were done away with.

When you get down to rope packing, it is used in small quantities and it is kind of a greasey material that doesn't easily shed fibers, and when you look at asbestos cement building products, it is asbestos fibers within a tar. It sheds nothing.

When I look at asbestos bearing gasketing materials, these are asbestos fibers in like a rubber matrix so it looked like they effected this change, a massive change the size and complexity of Rahway in those days. They effected the change on a risk adjusted basis. You got rid of the stuff like transite and asbestos pipe covering that would shed large volumn. To your point or your comments earlier about pipefitters hitting pipe covering with a hammer. Those kinds of things, the gross hazards, if you will, were done away with quickly leaving these smaller hazards these less, gosh, less offensive sorts of materials to be substituted and

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gasketing can be a very, from a technical perspective, you don't want to substitute gasketing quickly. A steam leak on a very high pressure main is a real hazard.

So, to me this looks like the sesidual of what's left after a very large change was made at the Rahway site purchase and practices.

Q. Let me start this way.

A. Go ahead.

Q. When you take out a gasket, do they often have to be scraped?

A. When you take off a gasket, yes. When you put them on, obviously no.

Q. So if you install a gasket in 1975 or 1976 that has asbestos, eventually when you have to take it off it is likely to be scraped, correct?

A. That's correct.

Q. And at that point that will release asbestos fibers, correct?

A. In my opinion a minimal amount like vinyl asbestos tile. The asbestos is in a matrix. It is roughly encapsulated so it may release fibers, but much, much smaller amount of fibers.

Q. I'm not fighting you on the issue.

A. Okay.

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Q. The asbestos packing that goes in pumps, that goes in hard and lubricated, correct?

A. I'm sorry?

Q. It goes in hard and lubricated. It doesn't creat much dust?

A. Correct.

Q. But when you take it out and it is dry, sometimes they actually take like a corkscrew?

A. Corkscrew.

Q. And they shove it in and pull it out, right?

A. Yes.

Q. And that's capable of creating dust too, isn't it?

A. But again, on a relative basis, a much, much smaller volume of dust.

Q. I understand. And asbestos rope -- by the way does it indicate in that memo that Merck is going to continue to use transite, which you said was a great hazard?

A. Let me correct you on one thing. It is rope packing. It is not like closeline rope.

Q. I understand. Does it talk about transite there?

A. Let us scan it and we will tell you. I

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don't see it on the second page. Okay. Due to lack of alternatives, asbestos cement building products -- I'm sorry. I saw cement I was thinking the powder. Existing installations only transite siding, roofing and hot boxes.

MR. SEAVER: Chris, is your question broader than that specific use of transite?

MR. PLACITELLA: No.

Q. You said she they stopped using all transite and I'm saying they still were using transite in '75, weren't they?

A. Yes, they hadn't removed it. I don't think we were buying it, but they hadn't removed it all.

Q. Remember when we talked earlier about the obligation not to needlessly exposes workers to asbestos?

A. Um-hum.

Q. Don't you think the scraping of asbestos gaskets after you know full well it can cause cancer is needlessly exposing people to asbestos?

A. No. The hazards were recognized, and as I say, you can't change everything out all at once in a plant the size and complexity of Rahway.

Q. Because it costs too much money.

A. No. You could create larger -- you know,

the law of unintended consequences? You could create significantly greater hazards by having gaskets that leak, toxic, noxious chemicals.

Q. When did you stop using the asbestos gaskets?

A. That, I don't know.

Q. What did you substitute them with?

A. I don't know at this point in time. And I also don't know sitting here whether the manufactures of this gasketing material, how quickly they adjusted the composition of their gaskets moving, say, from asbestos to glass fibers.

What I did say was it looked like a large change was made on a risk based method. You got rid of the big, big generators of asbestos fibers first, and relatively quickly. Lesser hazards, still hazards, but again, there were procedures put into place in terms of protective equipment and the like to null this stuff out.

To me this looks like a report on how far have we gotten on getting rid of asbestos at the Rahway site. How far have we gotten on not purchasing more of this stuff, and I'm sure there was a discussion, and I'm conjecturing, of course,

after this note was written in terms of when are you

going to get rid of these other items as well?

Again, based on my experience in manufacturing and plant engineering, these are some of the items that would take some time to substitute.

Q. So the man who tried to do the right thing, Mr. Doremus, says in '74 we shouldn't buy anymore asbestos, right?

A. Um-hum.

Q. He is the guy in charge of safety. He is the guy, right?

A. No. I think Jack Snyder was the guy.

Q. He worked for Jack Snyder?

A. Yes.

Q. He wrote, and he said no more asbestos. Not rope, not gaskets, not transite, not insulation, not anything?

A. It's a great position and it is a great position to take and as I said, I think the company was going in that direction as fast as it reasonably could without causing additional hazards.

Q. Then a couple of years later they finally got rid of buying new asbestos insulation, right?

MR. SEAVER: Objection.

A. We don't know when they got rid of it.

Q. Then they continued to use other asbestos

products despite Mr. Doremus' urging for however long, and you don't even know how long.

A. We can go around and around on this, but I'm telling you from my experiences this look like a report on progrress toward the end that Mr. Doremus asked for and relatively rapid progress given the complexity of the sites.

Q. How long did you use asbestos, new asbestos at that site?

A. I don't have documentation of that.

Q. You were still giving workers gloves made of asbestos in '79 and 1980, weren't you?

A. I don't know. I would be interested to know who used them and for what purpose.

MR. PLACITELLA: Mark this next.

(The above document is marked P-32)

A. This is Peter Caliguari to a bunch of people in mechanical or the maintenance department and the research establishment.

Q. The maintenance department included the mechanics, right?

A. Yes. Bill Downey was the fellow that was in charge of mechanical storage. If you go the the

to list, he maintained stocks of materials and purchased them. Harry Ferensi was the powerhouse

head, Joe Jackson, mechanical souperintendent, Eric Lindquist, quality control. Ed Scharschmidt head of the pilot plants, Lenny Schwatz head of the research engineering.

Q. These included the bosses for Mr. Chavan, right?

A. I believe Joe Jackson would have been in that line. If you look at the CC list it included tons of people in the mechanical area, so, yes.

Q. So according to this memo, five years after Mr. Doremus said no more asbestos gloves, Merck is still giving people like Mr. Chavan asbestos gloves to use in their work, right?

A. Looks to me like it's not just Mr. Chavan. The people I thought would be using asbestos gloves at this point would have included glass blowers in the research area, which is why Len Schwartz might be on a copy list.

There would be a small number of sort of specialized tasks you would require very heat resistant gloves for.

Q. In 1979 Merck was still using asbestos gloves, five years after Mr. Doremus said don't do

it anymore, correct?

A. That's correct. Of course, we don't know when Kevlar became available as the appropriate

substitute.

Q. Now, Mr. Doremus, in 1974, not only called for the elimination of further purchasing of asbestos, he also called for the elimination of anymore exposure to asbestos, did he not?

A. Yes.

Q. But you personally know and observed people like Mr. Chavan knocking asbestos off pipes with hammers in the '70's and into the '80s, correct?

A. No, I didn't testify to that effect. I testified to observing work practices prior to the Mt. Sinai visit with pipefitters knocking the stuff off like that.

Q. Did you not testify that Mr. Chavan continued to be exposed to asbestos in the '70s into the 1980s?

A. I did, but exposed and protected by PPE, Personal Protective Equipment and procedures that mitigated the risk.

Q. So you have evidence as you sit here today that you warned Mr. Chavan that he needed to protect

himself from exposure to asbestos.

MR. SEAVER: Objection to the form.

A. Well, we did present that safety talk

where the employees were warned of the hazards..

Q. There was for 1,980 though.

A. We don't know the date of that, except for Steve Foldy being on the copy list or mentioned the on it.

Q. Am I correct, sir, that the asbestos at Merck eventually killed John Chavan, Sr.?

A. I can't testify to that.

Q. In 1984, you did an inventory and there was still asbestos all over the Merck facility, correct?

A. And there's asbestos in certain locations today. It is not completely gone. But the key thing to remember procedures and protective equipment were put into place to mitigate the actual exposure.

Q. Way too late for Mr. Chavan, correct?

MR. SEAVER: Objection. Argumentative. Don't answer that question.

A. Of course, not.

Q. Of course, not, it wasn't way too late?

MR. SEAVER: He was responding to his

direction from counsel.

Q. The asbestos from Merck killed Mrs. Chavan, correct?

MR. SEAVER: Objection. Don't answer that

question. He doesn't know anyway nor has it ever been established.

Q. The asbestos from Merck poisoned John Chavan, Jr. did it not?

A. I have no evidence to that effect and I can't testify to that.

Q. From your review of all the material that you have seen today, and what you know, did Merck make any mistakes in how they handled asbestos as it related to John Chavan, Sr.?

A. In my opinion once the hazards --

MR. SEAVER: Object to the form of the question. I don't know what mistakes means. Go ahead and answer.

A. In my opinion once the hazards of asbestos were recognized, the company moved to elliminate its use or purchase and reduce its use as quickly as practically possible and provided safety talk information, provided information relative to the hazards of asbestos, promulgated standards in terms of personal protective equipment, again, as quickly

as the knowledge that we had at the point in time allowed.

MR. PLACITELLA: I respectfully move to strike. Read my question back.

(The above question is read)

MR. SEAVER: Same objection. Vague.

Q. Can you answers their question, sir?

A. I'm not knowledgeable of any mistakes made vis-a-vis Mr. Chavan.

Q. So everything that Merck did was on purpose?

MR. SEAVER: Objection. Argumentative.

A. Putting words in my mouth.

Q. Well, it wasn't a mistake, then it was done delibratly, would you agree?

MR. SEAVER: Objection. Argumentative?

A. No.

Q. Why wouldn't you agree?

A. As I said --

MR. SEAVER: Objection argumentative..

Q. It wasn't a mistake, you said, correct?

A. Correct.

Q. So if it wasn't a mistake, then they knew what they were doing, correct?

MR. SEAVER: Objection.

Q. It was deliberate.

MR. SEAVER: Argumentative. The witness testified he was not aware of any mistakes.

A. That's correct.

Q. So if there's no mistakes that means what

they did was on purpose.

MR. SEAVER: You are putting worlds in the witness' mouth. He testified he was not aware of any mistakes. Now you are trying to -- you are only offering him one option. I object to the question and I'm going to direct him not to answer that questions. If you ask an appropriate question, he will answer it.

Q. Everything that Merck did as it related to exposing John Chavan to asbestos was in your mind correct?

A. Based on the information that we were aware of at the time, yes.

Q. Based on what you were aware of?

A. Correct.

Q. Not what everybody else knew?

A. I can only testify to what I was aware of personally and the change in practices I saw once it was widely known, if you will, after the Selikoff, Mt. Siani stuff.

Q. Okay. Your testimony that everything was done correctly is premised based upon your own personal knowledge of what you were told, correct?

A. What I was told, what I was aware of generally as an engineer.

Q. Not all the other information that I showed you for over an hour dating back to 1942?

A. Six years before I was born. That's correct.

Q. If Merck was aware of the dangers of asbestos before Dr. Selikoff got there, or his people, in 1972, then you will agree with me that plenty of mistakes were made along the way as it related to protecting John Chavan, Sr, correct?

MR. SEAVER: Objection to the form. Define what you mean by dangers of asbestos. There's both the medical consequences and there's also the understanding of what can be done to protect against and what should be done to protect against it.

If you are including it all please say that. If you are simply talking about the medical information attributed to asbestos exposure, then confine the question to that.

Q. Can you answer my question now?

A. If you rephrase it.

MR. PLACITELLA: Can you read my the question back, please, Mr. Brody.

(The above question was read)

MR. SEAVER: The same objection. Are referring to the dangers of asbestos or are we

referring to the standards expected of property owners at the time in question?

Q. You can answer it.

A. To my it is a hypothetical, so how can I answer it? That big if is a qualifier. As far as I know, based on my experience, once we in the workplace from the plant manager down to the first line supervisor and hourly people, became truly aware of the asbestos hazards, Merck acted quickly to remove, stop purchasing the stuff, take better protective measures and really focus on improving the workplace situation relative to the asbestos hazard.

Q. We have seen in 1944 New Jersey established, and Merck was charged with the knowledge, that asbestos was a compensable disease,, asbestosis, correct?

A. Correct.

Q. Mr. Chavan started to work at the plant in

the late '40s, correct?

A. Correct.

Q. He was not warned after the compensation statute was established, correct?

A. I don't know.

Q. Do you have any evidence he was warned?

A. No.
Q. The Merck Manual in 1950 acknowledges that asbestos causes asbestosis, correct?
A. In large consetrations, correct.
Q. And in 1950, you have no information that John Chavan, Sr. was ever warned about the dangers of asbestos, correct?
A. Correct.
Q. In 1952, when the Walsh-Healey Act was established, setting asbestos exposure limits, you have no information to indicate John Chavan, Sr. was ever warned about the dangers of asbestos, correct?
A. I already testified I'm not at all familiar with that act.
Q. In 1958, when Mr. Doremus, who was the plant safety person, was receiving publications from the American Industrial Hygiene Association about asbestos, John Chavan was not warned about the dangers of asbestos, correct?

MR. SEAVER: Objection. Assumes facts not in established.
Q. You have no evidence to indicate he was warned, correct?
A. That's correct.
Q. In 1958, when the State of New Jersey enacted the asbestos regulations, you have no

evidence to indicate that John Chavan, Sr. was ever warned about the dangers of asbestos, correct?

A. That's also corrections.

Q. You also have no evidence that Merck conducted any testing to determine the level of asbestos dust in the plant generated by operations conducted by John Chavan and his co-workers, correct?

A. I have not seen evidence to that effect.

Q. In 1964, when the Accident Prevention Manual indicating asbestos could cause cancer by the National Safety Council was issued to members, you have no information to indicate John Chavan was warned about asbestos then, did you?

A. No. And nor do I have information relative to whether that was actually read by anyone in safety.

Q. The next year, in 1965, when George W.

Merck served on the board of trustees for the New York Academy of Sciences and appeared on the publication indicating that pipefitters, boilermakers, insulators, children and wives could gets mesothelioma, no warnings were issued by Merck to John Chavan, Sr, were they?

MR. SEAVER: Objection to the form of the

question.

A. I couldn't tell you.

Q. In 1968, when the Merck Manual indicated that asbestos could cause cancer and listed the very products that Mr. Chavan was exposed to, no warning was given by Merck to John Chavan, sr., was there?

A. Once again, we don't know.

Q. You have no evidence to indicate that that happened, do you?

A. That's correct.

Q. In 1971, when OSHA was passed, you have no evidence to indicate that John Chavan, Sr. was warned about the dangers of asbestos in the workplace at Merck, do you?

A. That's also correct.

Q. Although Merck knew that John Chavan, Sr. had fibrosis in his lungs in 1968, and never told him he had asbestosis until the day he retired, you

say they made no mistakes, correct?

MR. SEAVER: Objection to the question. Also assumes there was a diagnosis of asbestosis at an earlier date. You can answer the question, if you can.

A. I can't.

MR. PLACITELLA: I think that's my questions. I want to take five minutes.

(Recess taken)

Q. At this is point that concludes my questions. Thank you. I'll reserve, depending on what other people have to say.

Does anybody have any other questions?

(Discussion off the record)

(The deposition is concluded at 1:45)