

NO. 19785-BH02

KELLY-MOORE PAINT COMPANY, INC.,)
)
Plaintiff,)
vs.) IN THE DISTRICT OF
DOW CHEMICAL COMPANY, et al.,) BRAZORIA COUNTY, TEXAS
)
Defendants.) 23RD JUDICIAL DISTRICT
)

DEPOSITION OF ERNESTO GALLARDO

The following deposition was given on the 9th
day of December, 2003, commencing at the hour of 9:11 a.m.,
before Jenna Osborn, a Certified Shorthand Reporter, License
Number 8681.

The witness personally appeared at Community
Bank, 532 Broadway, King City, California.

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BY: FRANK FERNANDEZ, ESQ.

1 ERNESTO GALLARDO,
2 testified under penalty of perjury as follows:

3 EXAMINATION BY MR. DUBIN

4 MR. DUBIN: Q. Hello, Mr. Gallardo. Am I
5 pronouncing that correctly?

6 A. Gallardo.

7 Q. I will try my best. I'm sorry, I have a
8 little bit of a cold today, so if you can't hear me let me
9 know.

10 Exactly. We have a nice long desk apart from one
11 another.

12 This, as you know, is a deposition and what we are
13 going to do today is ask you a series of questions and the
14 reporter is going to take down your answers. Because she's
15 writing down the answers you have to give verbal responses.
16 So shaking -- when we are in normal conversations shaking
17 yes or no, that's an easy way to communicate. Here it has
18 to be a verbal response.

19 I'm going to ask you if you don't understand any of
20 my questions, ask me to clarify and I will try to make my
21 question clearer or more simple for you, whatever helps you
22 understand to be able to answer the questions appropriately
23 today.

24 I will ask you is it fair for me to assume if you
25 don't ask me to clarify a question that you understand it?

1 A. Okay.

2 Q. Okay. And again, if you want to take any
3 breaks during the day, if you want to go to the restroom,
4 get some water, I am perfectly happy to do that. Just let
5 me know and we'll stop and take a break to make sure you are
6 comfortable.

7 Is that okay?

8 A. Sure.

9 Q. Can you state your name for the record and
10 your current address.

11 A. My name is Ernesto Gallardo and I currently
12 reside at 212 San Antonio Drive in Greenfield.

13 Q. And Mr. Gallardo, are you represented by an
14 attorney here today?

15 A. That's correct, I am.

16 Q. Can you tell me who that is?

17 A. His name is Frank Fernandez.

18 Q. Is that the gentleman sitting next to you?

19 A. That's correct, it is.

20 Q. Do you have any other lawyers?

21 A. No, I don't.

22 Q. You understand this deposition is being taken
23 in a case filed by a company Kelly-Moore against Union
24 Carbide.

25 Do you understand that?

1 A. Yes, I do.

2 Q. Okay. And what do you know about that case?

3 A. I really don't know very much about it. I
4 know that it revolves obviously around the asbestos
5 industry. But other than that I don't know much about it.

6 Q. Do you know anything about Kelly-Moore and the
7 asbestos products that it sold?

8 A. I know that in the past they -- I was under
9 the assumption that they used asbestos in some of their
10 paint and other products.

11 Q. Okay. Do you know anything about
12 Kelly-Moore's tape-joint compound?

13 A. No, I don't.

14 Q. Do you know from your own personal knowledge
15 what types of asbestos Kelly-Moore used in its products?

16 A. Well obviously they used some of Union
17 Carbide's products, but other than that I don't know.

18 Q. Do you know whether or not Kelly-Moore had
19 other asbestos suppliers?

20 A. I do not.

21 Q. Do you know the percentage of the asbestos
22 that was used by Kelly-Moore that was supplied by Union
23 Carbide?

24 A. I do not.

25 Q. Do you have an understanding that you have

1 been listed as a witness, potential witness in the
2 Kelly-Moore litigation against Union Carbide?

3 A. Yes, I am aware of that.

4 Q. Who told you that?

5 A. Representative from Kelly-Moore.

6 Q. And how did you come to be represented by
7 Mr. Fernandez?

8 A. These other individuals that were also
9 employed by KCAC/Union Carbide had spoken to Mr. Fernandez
10 to represent some of the individuals, former employees. And
11 I just happened -- they called me in and asked if I would
12 speak with them also, and so I -- I said yes.

13 Q. Okay. Who were those other individuals?

14 A. Art Valdez and George Navarro were the ones I
15 spoke to.

16 Q. And in turn do you know how they came to be
17 associated with Mr. Fernandez?

18 A. They were referred to him by another attorney
19 in Salinas. And I really don't know the other attorney's
20 name.

21 Q. Have you ever spoken to any lawyers
22 representing Kelly-Moore Company?

23 A. Yes, I have.

24 Q. Okay. Who have you spoken to?

25 A. These two gentlemen over on my right.

1 Q. And do you recall their names?

2 A. Only the first names. One is Phillip and the
3 other one is Patrick.

4 Q. And how many times have you met with either or
5 both of them?

6 A. I met with Phillip twice -- well actually this
7 would have been the third time this morning, and with
8 Patrick twice. I met with him last evening and again early
9 this morning.

10 Q. When was the first time you met with either of
11 them?

12 A. I met Phillip approximately a month ago.

13 Q. How did you meet him?

14 A. He was down at my residence.

15 Q. Okay. He came to your house?

16 A. That's correct.

17 Q. And had you ever spoken to him before that?

18 A. Prior to that? No.

19 Q. What happened, did he show up and ring your
20 bell?

21 A. He showed up with Mr. Fernandez and George
22 Navarro.

23 Q. You met Mr. Fernandez, was that the first time
24 you met Mr. Fernandez?

25 A. That's incorrect. No, I've spoken to him

1 previously.

2 Q. Okay. And when you've met -- when you met
3 Phillip the first time, was he the only attorney at that
4 time who was there representing Kelly-Moore Company?

5 A. That's correct.

6 Q. What did you discuss during your first meeting
7 with Mr. -- with Phillip?

8 A. He asked me what I had done at the plant, some
9 of my duties, how long I had been there, things that were
10 related to my job.

11 Q. Okay. Do you recall giving him any -- what
12 did you -- well we'll go through that.

13 Did you discuss anything about the Kelly-Moore
14 case?

15 A. All he told me that there was a case in
16 litigation regarding Kelly-Moore and Union Carbide. He
17 didn't really go into specifics.

18 Q. Okay. Did he tell you -- okay. So he didn't
19 tell you anything else about -- anything specifically about
20 that case?

21 A. No, not really. Only that there was a
22 litigation going on.

23 Q. Okay. Did he ask you whether you would be
24 willing to appear as a witness in that case during that
25 meeting?

1 A. He didn't actually ask me if I would be
2 willing. He said that I was a potential witness, if I would
3 take time to think about it. I guess you -- and I told him
4 I would contemplate the question.

5 Q. Okay. Did he give you any reasons why he
6 thought you should be a witness in the litigation?

7 A. Well, he said that I was -- the fact I was
8 employed by the company for a number of years, that I could
9 be helpful to the case.

10 Q. And in what way could you be helpful to the
11 case did you understand?

12 A. Well, I could just tell him about some of the
13 conditions that we worked in. And I was familiar with the
14 asbestos industry.

15 Q. Okay. Do you have -- did he explain any
16 reason why he thought that the conditions that you worked in
17 in King City were relevant to a lawsuit between Kelly-Moore
18 and Union Carbide?

19 A. He really didn't go into detail.

20 Q. Okay. How long did your first meeting with
21 Phillip and Mr. Fernandez last?

22 A. Well, like I said previously, I had met
23 Mr. Fernandez previously.

24 Q. Right.

25 A. But my first meeting with Phillip was

1 approximately an hour or so.

2 Q. And that was at your home?

3 A. That's correct.

4 Q. Okay. And when was the next time you met with
5 him?

6 A. Yesterday evening.

7 Q. Okay. And what did you discuss at that time?

8 A. Basically the same things that we had
9 discussed in the previous meeting. And he introduced me to
10 Patrick then and made me aware that Patrick was representing
11 Kelly-Moore also.

12 Q. Okay. Did he discuss anything about what
13 types of questions I might ask you today?

14 A. Yeah, but not in great detail.

15 Q. What did you discuss?

16 A. He said that you would probably ask me how
17 long I had been employed there at the company, what my
18 duties were at the company. Basically that was it really.

19 Q. Did he give you any advice about how to answer
20 questions in a deposition?

21 A. Yes, he did.

22 Q. What did he tell you?

23 A. That try to answer questions with a yes or a
24 no.

25 Q. Okay. Did he tell you that you should give

1 short answers that didn't provide extra information beyond
2 the question that I have asked?

3 A. That's correct.

4 Q. Okay. And how long did you meet with the
5 attorneys last night?

6 A. Approximately about an hour I would say.

7 Q. Okay. Where did that occur?

8 A. That occurred in my residence.

9 Q. Okay. And how about this morning, you said
10 you had another meeting with --

11 A. Very brief. We had a cup of coffee down at
12 Denny's. And they were there just for a matter of minutes
13 before they left.

14 Q. Are you currently employed?

15 A. No, I'm not.

16 Q. Okay. Have you been compensated in any
17 respects by the attorneys for Kelly-Moore for your
18 participation in the case?

19 A. No, not at all.

20 Q. Have they discussed any potential compensation
21 for that?

22 A. No.

23 Q. Have they discussed whether you would be
24 willing to come to appear as a witness in a trial in Texas?

25 A. I think you asked me that earlier and my

1 response was yes, they did ask me.

2 Q. Did they discuss that there actually would be
3 a trial and you would have to go to Texas to testify?

4 A. No, they did not say I would have to go down
5 there. They said I may have to go down there.

6 Q. Is that something you would be willing to do?

7 A. It would be something I would have to look at.

8 Q. Why would you be willing to do that?

9 A. Why would I be willing to be a witness?

10 Q. Yes. Why would you be willing to come take
11 time out of your schedule to come to Texas for the company
12 Kelly-Moore?

13 A. Obviously I -- I am not pressed for time. I
14 mean, being unemployed. But I feel like if I got subpoenaed
15 to go, it would be my obligation to go.

16 Q. And I take it you don't know anything about
17 whether or not Kelly-Moore passed information onto consumers
18 of its products about safety measures they should take to
19 prevent any asbestos-related diseases?

20 A. I don't know anything about that.

21 Q. If Kelly-Moore didn't pass on that type of
22 information would that be a company that you would want to
23 testify for?

24 MR. FERNANDEZ: Object, calls for speculation.
25 Lacks foundation.

1 MR. DUBIN: Q. You can answer the question.

2 A. Can I answer that?

3 MR. FERNANDEZ: If you can.

4 MR. DUBIN: Q. To the extent that Kelly-Moore
5 didn't pass on information that was given to them about
6 health risks of asbestos to its consumers, is that a company
7 you would want to testify for?

8 A. Again, if I got a subpoena to go, it would be
9 my obligation to go.

10 MR. FERNANDEZ: It assumes facts not in evidence
11 that he wants to give testimony at all. And to the extent
12 that that has not been established, lacks foundation, it's
13 also argumentative.

14 MR. DUBIN: Q. You have been meeting with lawyers
15 for Kelly-Moore; is that correct?

16 A. Yes, that is correct.

17 Q. And in determining whether to cooperate with
18 those lawyers has it ever occurred to you that you might
19 want to know what kind of company they represent?

20 A. I --

21 MR. FERNANDEZ: That's a yes or a no.

22 THE WITNESS: Yes.

23 MR. DUBIN: Q. Okay. And why?

24 MR. HAINES: Object to the form of the question.

25 MR. DUBIN: Q. You can respond. Unless someone

1 instructs you not to answer, you can respond.

2 A. I understand. What was your question now?

3 Q. Why would that be something that you would
4 want to know?

5 A. Why would that be something that I -- I'm not
6 sure I understand your question.

7 Q. Let's go back. Let's start with some more
8 background.

9 Can you explain -- can you tell me how long you
10 worked at Union Carbide.

11 A. I was there -- Union Carbide/KCAC.

12 Q. Right.

13 A. I was there 32 years 10 months.

14 Q. And that was -- do you recall when you first
15 joined Union Carbide?

16 A. That's correct, I do. I started August of
17 1970.

18 Q. Okay. And in 1985 Union Carbide sold the
19 business to KCAC?

20 A. That's correct.

21 Q. How long did you stay on with KCAC?

22 A. Until they closed the doors. That was June 13
23 of this year.

24 Q. And can you briefly describe what positions
25 you have held over time at Union Carbide and KCAC?

1 A. Initially when I started back in 1970 I was in
2 the packaging department. And I basically stayed there for
3 two and a half years. Then I was fortunate enough to get
4 into the maintenance department. And that's where I spent
5 the rest of my time.

6 Q. Okay. And can you briefly describe your
7 duties in the packaging department.

8 A. Well, I worked in packaging, like I stated.
9 We -- obviously we put the product in the bag and then we
10 moved the product, we weighed the product, we moved the
11 product around on -- with a forklift, took it over to
12 shipping, things like that. We cleaned up in the bagging
13 room. We cleaned up some of the product bins. There were a
14 lot of manual labor in there. Sweeping up, trying to dust
15 control. Things of that nature.

16 Q. And what do you mean by dust control?

17 A. We would wash down wherever there was -- dust
18 would accumulate or product would accumulate, we would wash
19 it down with a water hose or sweep it up.

20 Q. And what were your basic job responsibilities
21 when you worked in maintenance?

22 A. I'm sorry?

23 Q. What were your job responsibilities basically
24 when you worked in maintenance?

25 A. When I first got in maintenance that would

1 have been like in January of 1973. I started as a mechanic
2 three which really is like entry level mechanic because I
3 really wasn't well versed in any maintenance operation. And
4 so the company offered the opportunity for me to learn the
5 maintenance department. I started just pipe work, little
6 bit of cutting with torches, little bit of welding. And as
7 time went on I progressed up the ladder as electrician one
8 in the maintenance department.

9 Q. And do you have any documents at all that you
10 received from Union Carbide or KCAC regarding your
11 employment? Do you have any of those?

12 A. Documents of what sort?

13 Q. Any sort. Anything having to do with safety
14 procedures, pay records --

15 A. I have -- I'm sure I have some check stubs
16 laying around the house somewhere.

17 Q. Do you know if you have any other types of
18 documents that you may have received during that period of
19 time?

20 A. I may have some certificates, letters of
21 recommendation, things of that -- of that nature.

22 Q. Do you know whether you have any safety
23 manuals or anything like that?

24 A. You know, I did at one time.

25 Q. You don't know whether you have them

1 currently?

2 A. I know I don't.

3 Q. And I take it you don't have any documents
4 with you today at the deposition?

5 A. No, I didn't bring anything.

6 Q. Were you asked to bring anything to the
7 deposition? By any --

8 A. No, I was not.

9 Q. Okay. Can you tell me -- you joined the
10 company in 1970; is that correct?

11 A. 1970, correct.

12 Q. Correct.

13 When you joined the company did you receive any
14 training?

15 A. Back then you went through like one day of
16 indoctrination. And then you went right to the job.

17 Q. And what did the, as you call it, the
18 indoctrination involve?

19 A. Basically it was a walk around the plant and
20 they would show you how the operation worked and they would
21 talk a little bit about safety.

22 Q. And what -- when you joined you understood the
23 business of Union Carbide in King City to be an asbestos
24 business; is that correct?

25 A. That's correct.

1 Q. And when they walked you around and told you
2 about safety, what did they tell you?

3 A. Well, I mean, just keep your heads up for, you
4 know -- you always want to be aware what's going on around
5 you. You don't always want to assume that the person who's
6 working next to you knows what he is doing so you have to
7 kind of look out for him also.

8 Q. Did they tell you anything about avoiding
9 inhalation dust or keeping dust levels down?

10 A. No.

11 Q. Okay. During the time period that you worked
12 there, let's just take Union Carbide, 1970 to 1985, were you
13 told anything at all about the hazards of asbestos?

14 A. From day one I was told that the asbestos that
15 we worked with was -- wasn't detrimental to our well-being.
16 It wasn't a carcinogenic. It was a short fiber asbestos. I
17 remember the person who walked me through the plant, Leroy
18 Crowe, mentioned to me one time you can actually eat this
19 stuff and nothing will happen to you. He said there is
20 nothing to worry about.

21 Q. That's what Leroy Crowe told you?

22 A. That's correct.

23 Q. What's a short fiber asbestos?

24 A. We were told that -- we have always been told
25 that the short fiber asbestos was a type of asbestos that

1 wouldn't accumulate in your lungs and cause any damage to
2 you, as opposed to long fiber. We were told that the long
3 fiber asbestos was -- wasn't in this area. Like
4 Johns-Manville up in Canada, that they have long fiber
5 asbestos. But the stuff that we worked with, we didn't have
6 anything to worry about.

7 Q. So basically they told you you didn't have to
8 take any safety precautions around this type of asbestos?

9 A. No, they never said that.

10 Q. What do you mean by that? What do you mean
11 they didn't say that? Did they tell you that you needed to
12 take safety precautions?

13 A. I'm sorry?

14 Q. Did they tell you you needed to take safety
15 precautions?

16 A. They still made us wear respirators around
17 there in certain areas of the plant.

18 Q. Why would they tell you to wear a respirator
19 if it was safe?

20 MR. FERNANDEZ: Assumes facts not in evidence,
21 calls for speculation.

22 MR. HAINES: Object to the form of the question.

23 MR. DUBIN: Q. Why did you understand they would
24 require you to wear a respirator if the asbestos was safe?

25 MR. FERNANDEZ: Lacks foundation.

1 MR. DUBIN: Q. You can answer that question. Did
2 you understand that they were telling you that the asbestos
3 was safe?

4 A. That's correct.

5 Q. Why -- what -- why would you then understand
6 that they were requiring you to wear a respirator if the
7 asbestos was safe?

8 MR. FERNANDEZ: Objection, lacks foundation. Calls
9 for speculation. He is asking you if you know why he was
10 telling you those things --

11 MR. DUBIN: Q. No, that's not what I'm asking you.
12 I'm asking what is your understanding -- in other words,
13 what did you think about why they would require you to wear
14 a respirator if they were telling you this stuff was safe?

15 A. I never really took the time to think of that.

16 Q. So during the period of time that you worked
17 at Union Carbide up to 1985, did you think that the asbestos
18 was safe?

19 A. Yes, I did.

20 Q. You never had any health concerns as a result
21 of your exposures to asbestos?

22 A. I did not.

23 Q. Let's talk about -- did you ever have safety
24 meetings during the period of time that you worked at Union
25 Carbide up to 1985?

1 A. Yes.

2 Q. Okay. And how frequent were those safety
3 meetings?

4 A. They would try to have them at least once a
5 month.

6 Q. Did those safety meetings ever -- in those
7 safety meetings did you ever discuss asbestos?

8 A. No.

9 Q. Did you ever discuss the need to keep dust
10 levels down in the facility?

11 A. Yes.

12 Q. Again did you have any understanding of why it
13 would have been important to keep dust levels down if the
14 asbestos that you were using was safe?

15 MR. FERNANDEZ: Again, argumentative.

16 MR. DUBIN: Q. You can answer the question.

17 A. We were told to keep the asbestos levels down,
18 to dust control in case OSHA or MSHA came around.

19 Q. Did you understand that asbestos was regulated
20 by the United States Government?

21 A. Back then I did not know.

22 Q. Okay. Have you ever discussed with either of
23 the attorneys who are here representing Kelly-Moore the
24 issue of whether or not Calidria asbestos was safe? You
25 recall ever discussing that?

1 A. Yes.

2 Q. Okay. What did you discuss?

3 A. They basically asked me if I knew if the
4 asbestos that I worked with was a carcinogen. If it was
5 safe to work with.

6 Q. Did you discuss the differences between
7 Calidria asbestos and any other type of asbestos?

8 A. I don't believe we did.

9 Q. Okay. Did they mention the name
10 Johns-Manville?

11 A. No, they did not.

12 Q. Okay. Did you ever receive, while you were
13 working at Union Carbide, any written materials on the
14 health risks of asbestos?

15 A. Not that I can recall.

16 Q. Do you recall receiving a brochure entitled
17 "What Every Employee Should Know About Asbestos"?

18 A. I do not recall that, no.

19 Q. Okay. Do you recall any signs in the facility
20 regarding the health risks of asbestos?

21 A. Yes, I do.

22 Q. Okay. What did they say?

23 A. Asbestos may be hazardous to your health.

24 Q. Do you recall any warnings on the bags of
25 Calidria asbestos?

1 A. Yes.

2 Q. And what did those say?

3 A. Basically the same thing, asbestos could be
4 hazardous to your health.

5 Q. Do you recall that smoking was banned at the
6 facility -- at the King City facility?

7 A. Yes, I do.

8 Q. Did they explain why?

9 A. Yes.

10 Q. What did they explain?

11 A. That the combination of asbestos and smoking
12 could be very dangerous.

13 Q. Okay. And again, if you had the understanding
14 that asbestos was safe, why would -- did you have an
15 understanding why they would ban asbestos -- ban smoking at
16 the King City facility?

17 MR. HAINES: Objection, form.

18 MR. FERNANDEZ: Assumes facts not in evidence.
19 Also, what do you mean by ban at the facility? Are you
20 talking about just at the facility or the entire premises?

21 MR. DUBIN: Q. You understand me when I was
22 discussing that smoking was banned at the King City
23 facility? Do you understand that?

24 A. Yes, I do.

25 Q. I believe you testified earlier that you

1 understood that people were telling you that Calidria
2 asbestos was safe; is that correct?

3 A. That's correct.

4 Q. Okay. Again, did you have any understanding
5 or how did you -- why did you think they would be banning
6 smoking at the King City facility if the asbestos they were
7 using was safe?

8 MR. HAINES: Object to form.

9 MR. DUBIN: Q. You can respond.

10 A. I never took the time to really think about it
11 because I was a non smoker and I didn't have an issue with
12 it.

13 Q. Do you remember a gentleman named
14 Dr. Sokomoto? Dr. Sokomoto.

15 A. Sokomoto. Vaguely.

16 Q. Okay. Did he ever come and talk to you at the
17 King City facility?

18 A. To me personally?

19 Q. To a group of workers.

20 A. He may have but I really don't remember.

21 Q. Do you recall him talking to you at all about
22 the potential health risks of cancer from smoking and
23 asbestos?

24 A. I'm sorry, I don't.

25 Q. Do you recall government regulators ever

1 coming onto the facility, the King City facility to inspect
2 the premises?

3 A. Like MSHA, is that what you are referring to?

4 Q. MSHA, OSHA.

5 A. Yes, I do.

6 Q. Did you ever meet with those government
7 regulators personally?

8 A. Occasionally they would talk to us, yes.

9 Q. In addition to your other job responsibilities
10 did you have responsibility for safety at King City? Did
11 you have any job responsibilities for safety at King City?

12 A. That were specifically delegated to me?

13 Q. Yes.

14 A. Well, it was -- it was known that whenever you
15 went to do a job that you always had to do it in a timely
16 and safe manner. But as far as me overseeing other people,
17 is that what you are making reference to?

18 Q. Were you on a safety committee?

19 A. At one time I was, yeah.

20 Q. When were you on a safety committee?

21 A. Oh, that was years ago. Oh, jeez. That was
22 years ago.

23 Q. Do you recall whether it was in the 1970's or
24 '80s?

25 A. It was in the '70s.

1 Q. That's when you were working for Union
2 Carbide?

3 A. That's correct.

4 Q. During the time that you were working at Union
5 Carbide did you ever see any information on the news or TV
6 about asbestos?

7 A. I don't recall seeing any.

8 Q. Do you remember an asbestos awareness campaign
9 by Joseph Calfono, somebody at the HEW in California?

10 A. No, I don't.

11 Q. Do you recall that Union Carbide had a medical
12 monitoring program?

13 A. I'm not sure I know what you mean by --

14 Q. Do you recall that employees at the King City
15 facility would periodically go to visit a doctor --

16 A. Yes.

17 Q. Okay. And that was -- was that in fact ever
18 since you got to the King City facility in 1970?

19 A. That's correct.

20 Q. Were you aware that Union Carbide adopted that
21 kind of medical monitoring program well before it was
22 required by any government agency?

23 MR. HAINES: Object to the form of the question.

24 MR. FERNANDEZ: He is asking if you know that.

25 MR. DUBIN: Q. Are you aware of that?

1 A. I'm not sure I understand your question.

2 Q. Okay. That's fine.

3 When did you first go to a doctor requested of
4 Union Carbide?

5 A. Right after my employment I got -- right after
6 I got hired.

7 Q. And you -- did you go to George Mee Memorial
8 Hospital at all? Do you remember the hospital in King City?

9 A. Not for my first visit, no.

10 Q. Where did you go for your first visit?

11 A. Up in Salinas at some clinic.

12 Q. Did you get chest x-rays taken?

13 A. Yes.

14 Q. Okay. Do you remember ever blowing into a
15 tube as part of the medical monitoring program?

16 A. In the recent years we have, yes.

17 Q. What do you mean by recent years?

18 A. Well I can remember them coming to the plant
19 within the last -- well since we became KCAC basically,
20 1985.

21 Q. So you don't ever recall taking breathing
22 tests when you worked for Union Carbide?

23 A. I remember having some but, you know, as far
24 as the date is concerned, I really can't be sure of when it
25 was.

1 Q. And do you recall the names of any of the
2 doctors that you saw as part of the medical monitoring
3 program?

4 A. Yes.

5 Q. Okay. And who were they?

6 A. I saw Dr. Hyde, I saw Dr. Fernando,
7 Dr. Hostetter, Dr. Greenberg, Dr. Kumar, Dr. Tongsin, and
8 there was a couple of times where we actually saw people who
9 weren't doctors.

10 Q. Did you see Dr. Pepito? Do you remember --

11 A. Yes, I do, yes.

12 Q. What was your impression of these doctors?

13 A. Couple of them really didn't impress me very
14 much.

15 Q. Okay. Who?

16 A. Dr. Greenberg, Dr. Hostetter, Dr. Fernando,
17 Dr. Hyde. I really don't remember Dr. Pepito very much.

18 Q. Okay. How about Dr. Kumar, what did you think
19 of him?

20 A. Dr. Kumar is a good doctor.

21 Q. And how about Dr. Tongsin?

22 A. He's a good doctor.

23 Q. And Dr. Tongsin, does he still practice in
24 this community?

25 A. Yes, he does.

1 Q. And you indicated you weren't impressed by
2 Dr. Hyde. Why?

3 A. Because he -- you would go in there to get
4 your physical, I mean, and it would be over in a couple of
5 minutes. I mean, it was kind of like cough, okay, you are
6 fine. Go.

7 Q. Okay. After your visits, did you ever have an
8 interview or discussion with the doctors about what the
9 results of your health exams were?

10 A. Yes, I did.

11 Q. Was that the general practice, that you would
12 have an interview with the doctor after your examination?

13 A. That really didn't take place until recent
14 years.

15 Q. And prior to that did you get any letters
16 following up on your examinations?

17 A. You would get a form letter saying that you
18 are okay to go back to work.

19 Q. What kind of information would that form
20 letter have? Would it have any other information on it?

21 A. No.

22 Q. Do you recall ever hearing the results of your
23 lab work or x-ray tests?

24 A. Yes.

25 Q. And what do you recall?

1 A. Well, I remember a couple of occasions where
2 Dr. Kumar was concerned with my high cholesterol level
3 and -- and again, this wasn't until recent years that this
4 took place.

5 Q. Do you know personally whether or not your
6 medical records exhibited any problems with your chest
7 x-rays or breathing tests, prior to -- during the course of
8 the medical monitoring program, do you have any knowledge of
9 that, one way or the other?

10 A. If I had --

11 Q. To your knowledge, did any of these doctors
12 ever conclude that you had some problems with your lungs?

13 A. Years ago someone told me that they thought
14 they saw some scarring on my lungs.

15 Q. Who told you that?

16 A. You know, I really don't remember the doctor.
17 That was years ago.

18 Q. When? Was it a doctor, one of these doctors,
19 one of the doctors who was associated with the medical
20 monitoring program?

21 A. It was one of these doctors, yes.

22 Q. You don't recall who that was?

23 A. No.

24 Q. Do you recall whether it was in the 1990's?

25 A. No, it was probably I would say in the mid

1 '80s, or so.

2 Q. During this period of time did you ever have
3 any of your -- any physician of your own, other than the
4 person you saw in the medical monitoring program? Did you
5 ever have a doctor?

6 A. No, I -- no, I didn't.

7 Q. Over the last 20 years have you ever seen a
8 doctor who wasn't associated with the medical monitoring
9 program?

10 A. A doctor who wasn't --

11 Q. Wasn't part of this Union Carbide program, had
12 you ever been to another doctor?

13 A. Yes, I have.

14 Q. When was the most recent time?

15 A. That would have been August of this year.

16 Q. And who was that?

17 A. Dr. Tim McAdams, at Stanford University.

18 Q. And who sent you to see Mr. McAdams?

19 A. Dr. McAdams.

20 Q. Dr. McAdams.

21 A. Dr. Doornik from Salinas.

22 Q. How do you spell that?

23 A. Doornik?

24 Q. Yes.

25 A. D-o-o-r-n-i-k.

1 Q. How did you come to see Dr. Doornik?

2 A. I was referred to him by Dr. Hostetter.

3 Q. How do you spell that?

4 A. Hostetter?

5 Q. Yes.

6 A. Your guess is as good as mine.

7 Q. Okay. And Dr. Hostetter, how did you come to
8 see him? Was he that --

9 A. He was a company doctor.

10 Q. Okay. And what did Dr. Hostetter refer you to
11 Dr. Doornik for?

12 A. I had injured my wrist.

13 Q. Okay. Is that the same reason you saw
14 Dr. McAdams?

15 A. That's correct.

16 Q. Okay. And prior to that instance when you saw
17 those three doctors, when was the time before that when you
18 saw a doctor who was not part of the Union Carbide program?

19 A. Probably about seven years before. That --
20 yeah.

21 Q. Do you recall what that was for?

22 A. Yes, I do.

23 Q. Okay. What was it for?

24 A. I had injured my shoulder.

25 Q. Okay. Have you ever seen any doctor for any

1 heart or lung problems?

2 A. Yes.

3 Q. Who?

4 A. Dr. Kumar.

5 Q. Okay. And can you describe that. What did
6 you see him for?

7 A. What I saw him for?

8 Q. Right.

9 A. Okay. I'm going to have to go into detail
10 here.

11 Q. That's fine.

12 A. One time I was sitting down on the sofa
13 watching television and I went to get up and I had this
14 really tightening in my chest and it scared the living heck
15 out of me. So I did a follow-up on him and he did an
16 echocardiogram on me, as well as a stress test.

17 Q. And do you know what that -- what his
18 conclusions were?

19 A. Yeah, he said that I probably had just pulled
20 something in my chest, a muscle in my chest.

21 Q. Do you exercise regularly?

22 A. Yes, I do.

23 Q. What sorts of exercise do you do?

24 A. I'm sorry?

25 Q. What sorts of exercise do you do?

1 A. I bicycle about 250, 300 miles a week, I lift
2 weights.

3 Q. Do you enter cycling races?

4 A. Yes, I do. I haven't recently though because
5 of an injury.

6 Q. To your wrist?

7 A. Yeah.

8 Q. What's the typical distance of those races?

9 A. They vary.

10 Q. Good?

11 A. I'm sorry?

12 Q. Are you good? Win at all?

13 A. I guess that's relative compared to --

14 Q. Yes.

15 A. I am better than some and not as good as
16 others.

17 MR. HAINES: Sounds like lawyers.

18 MR. DUBIN: Q. Did you ever -- do you ever
19 remember as part of the medical monitoring program something
20 called sputum cytology?

21 A. Yes.

22 Q. Okay. What was that?

23 A. You would actually like spit in a bottle and
24 they would analyze your spit. See if they could find
25 anything in there.

1 Q. Do you recall what the purpose of that was?

2 A. To determine if there was any build-up in your
3 lungs.

4 Q. Do you recall they were looking for cells that
5 might have changed that would suggest any risk of cancer?
6 Do you recall that?

7 A. I really don't know the formalities involved
8 in it. All I know is we were requested to spit in a bottle
9 and give it to them.

10 Q. You would get a bottle the night before and
11 you would have to sit it by your bedside?

12 A. I can't remember really how it worked. I just
13 remember spitting in these little plastic bottles. Try to
14 cough something up from deep within.

15 Q. Do you have an understanding what the purpose
16 of this whole medical program was, why they took chest
17 x-rays, do you know why they did this?

18 A. To ascertain whether anything built up in your
19 lungs.

20 Q. Did you understand that was related to
21 asbestos --

22 A. Yes.

23 Q. -- they wanted to see if you had any asbestos
24 changes?

25 A. Yes.

1 Q. Let's talk about some of the working
2 conditions at King City. First, why don't you give me your
3 general impression of the working conditions during the
4 period of time you were there when Union Carbide operated
5 it. What do you recall?

6 MR. FERNANDEZ: I will object, it calls for a
7 narrative. As posed, the question is vague.

8 MR. DUBIN: Q. Tell me what you recall generally
9 about the working conditions.

10 A. Well as far as safety, is that what your --

11 Q. Safety.

12 A. Okay. Well safety at times was a matter of
13 convenience. If the company was in a hurry to get something
14 done, they needed some product, they would kind of turn
15 their head as to some of the things that were being done.
16 There was times where I thought I was being overexposed,
17 actually working at what I thought maybe was hazardous
18 conditions.

19 Q. Let me stop you there for a second. What do
20 you mean by overexposed? Do you mean to asbestos?

21 A. Correct.

22 Q. And why were you concerned about being
23 overexposed if you thought that the asbestos you were
24 working with was safe?

25 A. Well, there was times where we would have to

1 go in product bins and maybe the product was just so hot,
2 and I'm talking like 175, 200 degrees, and we'd have to go
3 work in it, you would be waist deep in it. You'd come out
4 and you would be literally covered with asbestos. And we
5 really didn't have -- at that time we didn't have very good
6 way of cleaning ourselves off. And I know that the company
7 would emphasize that you try to go home without carrying any
8 of this stuff with you.

9 Q. The company would tell you that you should
10 change your clothes if you had asbestos on them?

11 A. They would never actually ask us to change our
12 clothes. They would just say you shouldn't take it with
13 you.

14 Q. What process is this where you said you would
15 be covered with asbestos? What were you doing?

16 A. You would work in a bin, like live bottom bin,
17 where the product that was being packaged was in a powdered
18 form and you would actually have to go in there and work
19 on -- like if a conveyor scooter had broken in there and you
20 would actually -- like I said, you would actually be covered
21 up to your waist, sometimes higher to try to get to that
22 conveyor.

23 Q. And when you did this were you told to wear a
24 respirator?

25 A. Yes.

1 Q. You understood that was to avoid breathing the
2 asbestos dust?

3 A. Yes, that was pretty obvious.

4 Q. Okay. What other sorts of operations around
5 the facility did you understand you were supposed to wear a
6 respirator if you were doing?

7 A. Basically we were told to wear a respirator to
8 wherever we thought there was dust -- potentially get
9 contaminated with dust.

10 Q. Do you recall there was a bagging room?

11 A. There was actually two packaging departments.

12 Q. And were these separated off from the rest of
13 the facilities, these bagging areas?

14 A. Were the packaging --

15 Q. Packaging, yeah.

16 A. Were the packaging departments separated off
17 from the rest of the plant, is that your question?

18 Q. Yes.

19 A. Yes.

20 Q. Did you understand that was to prevent the
21 asbestos dust from getting in the rest of the plant?

22 A. Yes.

23 Q. Okay. And were individuals in these packaging
24 areas required to wear a respirator?

25 A. Yes.

1 Q. And you understood that was to prevent the
2 inhalation of the asbestos dust?

3 A. Yes.

4 Q. The types of -- did you ever work in the
5 packaging areas?

6 A. Oh, yes. That's where I started.

7 Q. Okay. And you were told to wear a respirator
8 during these operations?

9 A. That's correct.

10 Q. Do you recall that Union Carbide used
11 something called a wet process in the facility? Do you know
12 what that means?

13 A. Yes, I do.

14 Q. Did you have an understanding that that was to
15 reduce dust levels in the facilities?

16 A. Yes.

17 Q. That's levels of asbestos dust?

18 A. I'm sorry?

19 Q. Reduce levels of asbestos dust in the
20 facilities?

21 A. Yes.

22 Q. And do you ever recall Union Carbide, for
23 instance, working on ventilation methods to reduce dust in
24 the facility?

25 A. Yes.

1 Q. Okay. And would those be periodically
2 upgraded over time, improve ventilation?

3 A. Yes.

4 Q. Do you recall Union Carbide ever taking dust
5 counts, measuring the amount of dust in -- asbestos dust in
6 the air?

7 A. Yes.

8 Q. In fact, were you fitted with something called
9 a personal monitor so they could monitor how much asbestos
10 dust was in the air near you?

11 A. Yes.

12 Q. You understand the purpose of that was to
13 monitor and control the level of asbestos dust to which you
14 were exposed?

15 A. That didn't necessarily control the dust you
16 were exposed to, no.

17 Q. They wanted to know how much asbestos you were
18 being exposed to to determine whether the controls were
19 adequate, is that fair to say?

20 A. Well they had the monitors on you but I don't
21 think they were to ascertain whether the controls were
22 working. They just wanted to know if you had been
23 overexposed to it.

24 Q. And you understand whether or not if they
25 found a high level they would have taken corrective actions

1 to try to reduce the exposure levels? Do you understand
2 that that's something they did?

3 A. Again, the monitoring was done to see if you
4 had been overexposed.

5 Q. Do you recall that from time to time if a
6 monitoring level was too high or thought to be too high they
7 would send a letter informing the employee of that fact?

8 A. Yes, they would.

9 Q. Okay. Did you ever personally receive any of
10 these letters, any of those letters?

11 A. You know, if I did, I really don't remember.

12 Q. But you -- you don't -- do you have any
13 personal knowledge whether or not the asbestos levels that
14 were monitored for you were ever over any government
15 regulations?

16 A. There was a couple instances where I had been
17 overexposed.

18 Q. Okay. And they told you that?

19 A. Yes, they did.

20 Q. Who were your supervisors when you worked in
21 the King City plant for Union Carbide?

22 A. For Union Carbide?

23 Q. Union Carbide.

24 A. The first person I started working for was
25 Bill Usery.

1 Q. Okay.

2 A. Then I worked for -- not necessarily in order.

3 Q. Right.

4 A. I worked for Andy Anderson.

5 Q. Uh-huh.

6 A. Abby Andre. Ray Groggen. Carol Groggen. Now
7 those were my immediate supervisors.

8 Q. Right.

9 A. I think that basically covers it.

10 Q. How many people would you say worked at any
11 one time at the King City facility?

12 MR. FERNANDEZ: What time frame?

13 MR. DUBIN: Q. If it changed over time, then you
14 can let me know that. But approximately how many people
15 would have been working in the facility?

16 MR. FERNANDEZ: Again, when Union Carbide ran it,
17 when KCAC ran it?

18 MR. DUBIN: There has been no foundation there was
19 a difference.

20 Q. Did the average that worked in the facility,
21 did it change over time?

22 A. Dramatically.

23 Q. Can you give me an approximation how many
24 people worked in the facility at various points? When did
25 the changes occur and how many people were there?

1 A. Let me see if I can -- would you like to know
2 approximately how many people were there when I initially
3 started?

4 Q. Sure. Why don't we start there.

5 A. The whole plant or one shift?

6 Q. The whole plant. How many employees did you
7 understand that they had?

8 A. This is going to take a bit. I'm going to
9 have to take a wild guess but I would say at the highest
10 point we had approximately 75 people there. Again, I am
11 just guessing at this.

12 Q. I understand. I am just asking you for an
13 approximation.

14 So you would say that 75 is the largest number of
15 people you felt were working in the facility at any one
16 time --

17 A. That includes management.

18 Q. Including management. Okay.

19 How big was the mill?

20 A. How big was it?

21 Q. Yes. How big --

22 A. Square feet?

23 Q. I mean approximately. Was it the size of a
24 barn, size of a supermarket?

25 MR. FERNANDEZ: You talking about the main plant?

1 MR. DUBIN: Yeah, the mill.

2 THE WITNESS: That -- I guess that's relative. You
3 say supermarket, small supermarket, big supermarket.

4 MR. DUBIN: Q. Is there any way you can describe
5 it in a way that makes sense to you? How big of a mill?

6 A. It is bigger than the building that we are
7 currently in.

8 Q. Well, unfortunately we are just going to have
9 a record. Was this a very large building?

10 A. Yes, it was a large building.

11 MR. FERNANDEZ: Maybe in terms of a football field.
12 The --

13 THE WITNESS: It was not as big as a football
14 field.

15 MR. FERNANDEZ: High school gym?

16 MR. DUBIN: Q. Was it as big as a high school gym?

17 A. Maybe a bit bigger than a gym. But again,
18 that's all relative. Small high school, big high school.

19 Q. True.

20 Now what were your impressions of your supervisors?
21 Did you think that they cared about keeping asbestos dust
22 levels down?

23 MR. HAINES: Object to the form of the question.

24 THE WITNESS: Can I answer?

25 MR. FERNANDEZ: Sure.

1 MR. DUBIN: Q. You can answer.

2 MR. FERNANDEZ: I will object it calls for a
3 narrative. He named five supervisors.

4 MR. DUBIN: That's fine.

5 Q. Your general impression. If there are
6 differences you can explain the differences. Do you think
7 they were interested in keeping asbestos levels down?

8 MR. HAINES: Object to the form of the question.

9 MR. DUBIN: Q. Did they seem to you to be
10 interested in keeping the asbestos levels down?

11 MR. FERNANDEZ: Also calls for speculation.

12 THE WITNESS: Yes.

13 MR. DUBIN: Q. Okay. How do you -- why do you
14 think that? What made you think that?

15 A. Well, because they would have people walking
16 around with a water hose washing down the dusty areas,
17 picking up broken bags, putting them in the recycle bins.

18 Q. Would people remind you to wear the
19 respirators in areas --

20 A. In areas where it was necessary.

21 Q. Okay. And was there asbestos dust in areas
22 where respirators were not required? Was there still
23 asbestos dust in areas where respirators were not required?

24 A. Oh, definitely, yes.

25 Q. And was it the general practice to wear

1 respirators in those areas?

2 A. It wasn't mandated. It was a matter of
3 choice.

4 Q. They told you you could wear a respirator if
5 you felt you didn't want to be exposed to the dust?

6 A. Well they never told you you couldn't.

7 Q. Right.

8 Did they tell you they would supply you
9 additional -- the respirators you used, were these
10 respirators that would only last for one day?

11 A. When we initially started there that's the way
12 it was. They were just respirators where -- they were throw
13 away.

14 Q. Then the bagging -- did I understand that in
15 the bagging area they started using something called air
16 supplied respirators?

17 A. I am not sure that's what they were called.
18 But they became more elaborate.

19 Q. But the dust masks that were used in the
20 general part of the facility, these were basically throw
21 away masks?

22 A. When I initially started, yes.

23 Q. And was it your understanding that if you
24 wanted to wear a mask in the general areas of the plant
25 where respirators weren't required, that they would supply

1 you those masks if you wanted them?

2 A. Right. They would never deny you having a
3 respirator.

4 Q. And now when the supervisors walked around
5 these areas where the respirators were not required, did
6 they typically wear respirators?

7 A. There were occasions where they would just
8 walk right through there, like -- that's where I kind of
9 like had issues with that because they would tell us we had
10 to wear respirators and they would walk right through there
11 like it didn't bother them.

12 Q. Now the -- was there an office building that
13 was separate from the mill?

14 A. That's correct.

15 Q. Okay. And who were some of the people you
16 recall who worked in the office building? Were those --
17 were those your immediate supervisors or were those
18 people --

19 A. No, those were upper management.

20 Q. Who do you recall working with from upper
21 management?

22 A. Over the years?

23 Q. Over the years.

24 A. There was George Vessels, there was Richard
25 Marsten, there was Diane Moore, Daryl Garcia, Trinidad Cruz,

1 John Myers, Ed Kleber. There has been so many people over
2 the years I can't remember the names. I remember the faces
3 but not names. There is actually quite a few more but
4 unfortunately I can't recall the names.

5 Q. That's okay. I'm sure you did your best.

6 The people in upper management, did they ever come
7 into the mill area?

8 A. Bob Kronkhyte. I'm still dwelling on that.

9 Q. That's okay.

10 Did these people who were in upper management that
11 worked in the office, did they ever come in the mill area
12 too?

13 A. Yes.

14 Q. And when they did that and they went into
15 areas where respirators were not required, did they
16 typically wear respirators?

17 A. Areas where they were not required.

18 Q. Not required.

19 A. They did not wear them, no.

20 Q. And that included John Myers? Do you ever
21 recall him coming into the mill?

22 A. Oh, I -- yes, I do.

23 Q. And did he wear a respirator in areas where
24 there -- did he go into areas where there was asbestos dust
25 and not wear a respirator?

1 A. I never saw John do that.

2 Q. I'm sorry. In other words, did he go in areas
3 in the mill where there was asbestos dust but he -- but
4 respirators were not required?

5 A. Well basically there was asbestos dust all
6 over.

7 Q. Okay. And many times -- what I am getting at
8 is many times was John Myers going into those areas where
9 there was asbestos dust and he still wasn't wearing a
10 respirator?

11 A. Again, I have to emphasize no matter where you
12 looked there was always dust in the air. So no matter where
13 you walked in the plant there was dust. In some places it
14 was heavier than others.

15 Q. What I am getting at is many times did John
16 Myers go into those areas and he didn't wear a respirator?

17 A. Yes.

18 Q. Okay. Did John Myers when he did that, did he
19 act like he was scared, scared of the dust?

20 MR. HAINES: Object to the form of the question.

21 MR. DUBIN: Q. Did he act like he was scared?

22 A. No.

23 Q. Okay. Do you have any reason to believe that
24 your own health has been affected by inhalation of asbestos
25 dust?

1 A. At this time I don't, no.

2 Q. Have you ever heard of a condition called
3 mesothelioma?

4 A. I've heard it mentioned before, correct.

5 Q. When is the first time you heard of that?

6 A. Years ago.

7 Q. When?

8 A. When years ago?

9 Q. Yeah, do you recall any rough time period?

10 A. No, I don't.

11 Q. Did you hear about that through your
12 employment at the asbestos mill?

13 A. Actually, I believe the first time that I
14 heard it I heard it probably like from a MSHA inspector.

15 Q. Was that somebody who came in to inspect the
16 King City facility?

17 A. That's correct.

18 Q. Okay. And do you recall whether that was in
19 the 1970's, 1980's, anything like that?

20 A. No, I really don't.

21 Q. Okay. What did he tell you? He or she.

22 A. They spoke to us about the potential for
23 asbestos to cause it; that we should always be aware that no
24 matter where we are at -- he emphasized whenever we are on
25 the plant site we should wear our respirator. He says it's

1 not simply -- simply because you don't see asbestos there it
2 doesn't necessarily mean that it's not there. So basically
3 that's what he told us.

4 Q. Were you ever told that by your supervisors
5 too, that there could be dust in the air and you wouldn't
6 see it, asbestos dust in the air and you wouldn't see it?

7 A. Yeah. Because there was a contradiction onto
8 themselves at times, management. They would say the stuff
9 that's going to hurt you, it's not the stuff you can see,
10 it's the stuff you can't see.

11 Q. That's something people would tell you -- your
12 supervisors would tell you that?

13 A. On occasion they would, yes.

14 Q. And this meeting with the person from MSHA,
15 did that occur at Union Carbide?

16 A. At the plant site, yes.

17 Q. Did you ever get similar information from
18 anybody involved with OSHA, O-S-H-A?

19 A. I believe OSHA is -- if I did, I don't
20 remember.

21 Q. Okay. Do you know anybody in the -- who you
22 worked with at all in the King City facility who ever
23 contracted the disease mesothelioma?

24 A. Well, I know of one that actually passed away
25 but I am not sure if he passed away from that. I know he

1 had lung cancer.

2 Q. And who was it who died of lung cancer?

3 A. Paul Whitlock.

4 Q. Okay. Are you sure Mr. Whitlock died of lung
5 cancer?

6 MR. FERNANDEZ: Is that your understanding?

7 THE WITNESS: That's my understanding.

8 MR. DUBIN: Q. Where did you get that
9 understanding?

10 A. I was told by Phillip.

11 Q. And you don't know whether or not what Phillip
12 told you is the truth, do you?

13 A. I have no reason to doubt him.

14 Q. Okay. You are aware Mr. Whitlock died from a
15 heart condition?

16 MR. HAINES: Object to the form of the condition.
17 Are you a witness now?

18 MR. DUBIN: I'm asking him whether he's aware of
19 that.

20 MR. HAINES: I thought you told him that.

21 MR. DUBIN: Are you a witness?

22 Q. I'm asking you are you aware that Mr. Whitlock
23 died from a heart condition directly after heart surgery?

24 MR. HAINES: Object to the form of the question.

25 MR. FERNANDEZ: Assumes facts not in evidence.

1 Lacks foundation.

2 THE WITNESS: Do I answer?

3 MR. FERNANDEZ: If the answer is yes, yes, if the
4 answer is no, no. If the answer is you don't know --

5 THE WITNESS: We had been told by management that
6 he had died from a heart condition.

7 MR. DUBIN: Q. And do you know whether
8 Mr. Whitlock was a smoker?

9 A. Yes, he was.

10 Q. Was he a heavy smoker?

11 A. That's relative. I don't know what heavy
12 smoker is.

13 Q. You are aware that cigarette smoking can cause
14 lung cancer?

15 A. That's what it says on the package.

16 Q. Are you aware of anybody else among the people
17 that you worked with over the period of time that you were
18 at Union Carbide or KCAC who you believed to have suffered
19 from some disease as a result of exposure to asbestos?

20 A. I was told years ago that this former
21 employee, Don Sewell, had passed away from lung cancer.

22 Q. Do you know how to spell his last name?

23 A. S-e-w-e-l-l.

24 Q. Okay. Did you know him?

25 A. Yes, I did.

1 Q. Was he a smoker, to your knowledge?

2 A. No, I really don't remember if he was or not.

3 MR. DUBIN: Okay. Now I'm going to give you a
4 five-minute break. We have been going now for an hour.

5 THE WITNESS: Sure.

6 (Recess held.)

7 MR. DUBIN: Q. I want to ask you about a couple of
8 documents.

9 Do you recall, I know this is stretching it back a
10 number of now decades, but being involved early on with an
11 OSHA inspection of the King City facility? About 1974?

12 A. If I remember correctly, I was involved in
13 more than one.

14 Q. Do you recall a time when OSHA inspectors came
15 to the facility and you and a number of other employees
16 accompanied them to look around?

17 A. Yeah, we do that periodically. There was
18 some -- they'd select some employee to go along with them.

19 Q. Do you recall Mr. Marsten?

20 A. Dick Marsten, yes, I do.

21 Q. What kind of person was Mr. Marsten?

22 A. Hard headed. He was -- I guess he was a good
23 person. I didn't always have good rapport with him. Very
24 intelligent individual. Very articulate, well versed in a
25 lot of things.

1 Q. What was his position?

2 A. He was a -- if I remember correctly, I think
3 he was a company engineer.

4 Q. Do you recall at all going with Mr. Marsten
5 and actually Charles Freeman from OSHA to do any inspection
6 ever?

7 A. Again, I have to emphasize that I do remember
8 being on inspections but I don't remember the people
9 involved.

10 MR. DUBIN: I am just going to mark this as Exhibit
11 1 to the deposition.

12 (Whereupon, Deposition Exhibit 1, as
13 described in the index, was marked for
14 identification.)

15 MR. DUBIN: Q. Take a look at that.

16 I take it you have never seen this --

17 A. You want me to take the time to actually read
18 it?

19 Q. Yes, why don't you take the time to actually
20 read it and let me know when you are done reading it.

21 Have you read that document?

22 A. I've read it now, yes.

23 Q. You can keep it in front of you.

24 I take it you have -- have you ever seen this
25 document before?

1 A. If I did, I don't remember.

2 Q. Okay.

3 A. I mean that was what, 29 years ago.

4 Q. Okay. Do you recall this inspection at all,
5 sitting here today?

6 A. Like I said earlier, I know that I was on more
7 than one inspection, and I don't particularly -- can
8 pinpoint one inspection over that period of time.

9 Q. Okay. Does this appear to be an accurate
10 reflection of what -- what happened when you went with OSHA
11 inspectors --

12 A. Did you say accurate or inaccurate?

13 Q. Accurate. Reflection of what went on when you
14 went around --

15 MR. FERNANDEZ: I will object, it calls for
16 speculation, lacks foundation. He just said he doesn't
17 remember this inspection.

18 MR. DUBIN: Q. I am saying do you have a
19 recollection of whether this is accurate of what you do
20 recall about the OSHA inspections, the procedures, what
21 would happen?

22 MR. FERNANDEZ: Same objection.

23 MR. DUBIN: Q. You can respond.

24 A. I can recall going on inspections on more than
25 one. But I don't really remember, you know, the intricacies

1 of it.

2 Q. Do you ever -- recall ever being present when
3 the people from OSHA or MSHA were discussing the results of
4 their inspections, what they found and what they thought
5 about the plant?

6 A. At times we would be there but normally they
7 would discuss it with management. And I wasn't part of
8 management.

9 Q. See in the last page, page 3, it says
10 "Mr. Freeman" who's the inspector "several times said to me
11 and others that we have one of the best, if not the best
12 plant in California safety wise."

13 Do you recall ever being present when anybody from
14 OSHA or any other regulatory agency made those kinds of
15 statements?

16 A. I do not recall that.

17 Q. Do you recall something called the safety
18 audits?

19 A. Vaguely.

20 Q. Do you recall that there were -- that part of
21 safety audits would be interviewing employees about their
22 thoughts about the workplace? Do you recall that?

23 A. Management interviewing employees?

24 Q. Yes.

25 A. Is that what you are saying?

1 Q. Yeah, management interviewing employees.

2 A. I recall that we would have periodic safety
3 committee meetings.

4 Q. Why don't you tell me a little bit about the
5 safety committee. What was the safety committee?

6 A. They would have periodic inspections, someone
7 from management and maybe a couple other people from hourly
8 would go around the plant and look for things like that they
9 thought were unsafe. And those issues would be wrote up.
10 And after the inspection, the safety committee which
11 basically was a few people -- I believe there was like maybe
12 two or three people from hourly and maybe two or three
13 people from salary would get together and discuss these
14 issues. And it would kind of like make up their minds as to
15 what actions should be taken on some or if any actions
16 should be taken on any of them.

17 Q. And that's something you participated in at
18 one point, these safety --

19 A. That's correct.

20 Q. And did that include, the safety committee,
21 ways to reduce dust levels or to -- places where there
22 should be additional clean up?

23 A. It addressed all aspects of safety.
24 Housekeeping was one of the primary concerns.

25 Q. And by housekeeping, you mean trying to keep

1 dust levels down to keep --

2 A. Whatever. Not just keeping dust levels down
3 but picking up pieces of wood, pieces of metal laying
4 around. Anything that would -- the potential for someone to
5 get hurt.

6 Q. That included keeping dust levels down, as one
7 of many things?

8 A. Yes.

9 Q. Let's go back and ask you. Were you trained
10 in the use of respirators, how to use them?

11 A. They taught you how to fit it properly, yes.

12 Q. Were you told you shouldn't have facial hair
13 and stuff like that?

14 A. You know, initially when I first started
15 working there that was not an issue. It wasn't until years
16 later that they said you could not have a beard.

17 Q. But it eventually became a plant regulation
18 that you could not have a beard?

19 A. That's correct, they did.

20 Q. Did they show you how to wear a respirator,
21 how to put it on and how it was sealed properly?

22 A. Yes, they would actually test you.

23 Q. What did that involve?

24 A. Well they would have you fit your respirator
25 to where you felt it was comfortable and where it was

1 working properly and then they would spray this really
2 pungent odor. I mean it was terrible. And have you take
3 deep breaths, and if you coughed it wasn't working right.

4 Q. And when would they do that training?

5 A. They didn't do it a whole lot. They did it --
6 you know, it wasn't like on a regular basis.

7 Q. But would it be periodically they would do it
8 again or would there be refreshers?

9 A. I'm not sure I understand the question.

10 Q. Would one person be trained like that more
11 than once? Would you get multiple trainings about wearing
12 the respirators?

13 A. No, not training. You would just get fitted,
14 make sure that it was working all right. It wasn't what I
15 would call training.

16 Q. Okay. Do you remember them having monthly
17 safety themes at the facility?

18 A. Well, I remember they would put -- we had a
19 big billboard outside and they would put different posters
20 up on it.

21 Q. Do you ever recall being shown safety videos?

22 A. Yes.

23 Q. Did any of those safety videos have to do with
24 respirator use?

25 A. On occasion they would, yes.

1 Q. You recall ever seeing any videos that
2 discussed asbestos and the need to keep asbestos dust down?

3 A. I may have but if I did I don't really recall.

4 Q. Do you recall ever meeting with a
5 Mr. Piersall, P-i-e-r-s --

6 A. Ernie Piersall, yes, I do.

7 Q. Who was Ernie Piersall?

8 A. When we were still affiliated with Union
9 Carbide he was -- I guess oversaw the whole safety program
10 for Union Carbide, nationwide.

11 Q. And from time to time would he come to King
12 City?

13 A. Yes, he would.

14 Q. Do you recall about how often that was?

15 A. You know, I really don't. I know he was there
16 on several occasions.

17 Q. Was it several times a year or?

18 A. You know, I would just be speculating because
19 I'm not really sure.

20 Q. Okay. Do you ever recall having discussions
21 about safety with Mr. Piersall?

22 A. Yes, I do.

23 Q. Do you remember having discussions with him in
24 the context of safety audits? Do you have an understanding
25 that what Mr. Piersall was doing was conducting safety

1 audits?

2 A. By audits, do you mean inspections?

3 Q. Inspections. Safety inspections.

4 A. Yes. Yes.

5 Q. And Mr. Piersall wasn't from California, was
6 he?

7 A. I believe he lived in Colorado.

8 Q. Okay.

9 A. I think he was from Grand Junction.

10 Q. Grand Junction, another Union Carbide
11 facility?

12 A. That's correct.

13 Q. Okay. I'm going to show you this document,
14 you can feel free to read how ever much of it you would
15 like. I am only going to ask you about the portion that
16 appears to be the results of an interview with you. But
17 here's the entire document.

18 MR. DUBIN: And I'll mark this Exhibit 2. The
19 cover is a subject management safety audit, King City,
20 October 16, 17, 1974, dated November 4th, 1974.

21 THE WITNESS: Is there any specific part you would
22 like me to read?

23 MR. DUBIN: You can feel free to read whatever you
24 would like. I'm going to ask you there is a portion that
25 appears to be a report of an interview with you. I am just

1 going to ask you if you recall that at all.

2 (Whereupon, Deposition Exhibit 2, as
3 described in the index, was marked for
4 identification.)

5 THE WITNESS: Okay. I read my portion.

6 MR. DUBIN: Q. Do you recall anything about this
7 interview at all?

8 A. If I remember correctly, I met with
9 Mr. Piersall on more than one occasion. So I really can't
10 say yeah, I remember that specific interview.

11 Q. I am curious whether this portion where it
12 says asbestos exposure was a concern, do you recall being
13 concerned about asbestos exposure?

14 A. Well on more than one occasion, yes.

15 Q. And what do you mean by that?

16 A. Well, like I said previously, there were times
17 where I would have to go into bins or work on a piece of
18 equipment where it was just covered with asbestos. And I
19 remember initially when I first started working there in the
20 packaging department where you would be bagging, putting the
21 product in a bag and under high pressure and the bag would
22 blow and you would just have asbestos -- I mean, actually
23 asbestos would actually blow under your respirator. Because
24 it would blow with such force.

25 Q. During those operations were you wearing a

1 respirator?

2 A. Yes.

3 Q. And you were told you should be wearing a
4 respirator; is that right?

5 A. Oh, yes.

6 Q. I am curious. Earlier you said you were not
7 concerned about asbestos exposure I believe because you said
8 you thought it was safe. And this appears to be reflecting
9 that you were concerned. Can you explain that at all.

10 MR. HAINES: Object to the form of the question.

11 MR. DUBIN: Q. Why would you be concerned about
12 asbestos exposure if you believed the asbestos you were
13 using there was safe?

14 A. Well, I felt that -- in one form or another
15 basically anything of too much is bad for you. I mean, when
16 you can walk into a room, and I am making reference to live
17 bottom bin, I will call that a room, and the asbestos is
18 like maybe up to your waist or up to your chest, and you
19 have to work in it, I mean, the potential is there to harm
20 you even if you are wearing a respirator. I mean, it was
21 like -- I know from day one they preached to us that the
22 asbestos that we worked with, short fiber, was not harmful
23 to you. But yet there was times where they insisted that
24 you wear your respirator. So like I said previously, they
25 are a contradiction onto themselves. But I was concerned

1 that I was just getting too much of it onto myself, all over
2 my clothing. And there were times where we didn't have an
3 adequate way to clean ourselves off from this asbestos.

4 Q. When you worked at King City for Union Carbide
5 did you believe that the asbestos was safe?

6 A. I was told by management from day one the
7 asbestos we worked with was not a carcinogen; that we had
8 nothing to worry about.

9 Q. You indicate here that -- that you had quit or
10 quit -- or were quitting smoking. Why -- what was the
11 relevance of smoking?

12 A. I smoked some when I was in the service. And
13 I think I smoked because everybody else smoked. It was the
14 cool thing to do. When I started working at the plant, like
15 I smoked maybe one, two cigarettes a day. And it was
16 basically like after lunch or something. And I had small
17 children at the time and I just didn't like smoking around
18 the house so I just completely stopped.

19 Q. Were you ever told that the reason why
20 somebody would need to quit smoking if they worked at the
21 King City facility was because there was a potential
22 interaction between smoking and asbestos and the causation
23 of cancer?

24 A. Are you asking me if that's the reason I quit?

25 Q. No, were you told that?

1 A. That there is a direct correlation between the
2 two?

3 Q. That there could be a relationship between
4 asbestos and lung cancer.

5 MR. FERNANDEZ: And smoking?

6 MR. DUBIN: Q. Asbestos and lung cancer with
7 smoking.

8 A. Yes, we were told that.

9 Q. And to the extent they were telling you not to
10 smoke at King City where there was only Calidria asbestos,
11 did you understand that they were warning you about a
12 potential relationship between Calidria asbestos or the
13 short fiber asbestos and cancer?

14 MR. HAINES: Object to the form.

15 THE WITNESS: I'm sorry?

16 MR. DUBIN: Q. Did you understand that -- the only
17 asbestos that was present in the King City facility was this
18 short fiber asbestos, right?

19 A. That's correct. That's what we were told.

20 Q. And they were telling you not to smoke in that
21 facility; is that correct?

22 A. Initially they told us -- when I first started
23 working there you could smoke just about anywhere. Well,
24 you could smoke anywhere. But then as the years progressed
25 then they said well, okay, you can't smoke in that area of

1 the plant but you can smoke over here. And then as time
2 progressed, they just banned smoking completely on the plant
3 premises.

4 Q. Was it your impression that the people at King
5 City were treating their asbestos as a potential health
6 hazard?

7 MR. HAINES: Object to the form of the question.

8 MR. DUBIN: Q. In other words, were they taking
9 precautions treating it as a potential health hazard?

10 A. Well they emphasized that you wear your
11 respirator.

12 Q. And they sent you to medical monitoring?

13 A. Yes, they did.

14 Q. And they put in ventilation systems?

15 A. I am not sure I know what ventilation systems
16 are.

17 Q. They tried to reduce the amount of dust by
18 getting better air flow in certain areas, like the bagging
19 room?

20 A. Not air flow, no. They were actually
21 filtering the air but they weren't actually pumping air into
22 it, if that's what you mean.

23 Q. They were trying to filter the asbestos out of
24 the air?

25 A. Right.

1 Q. You understood that these precautions were
2 being taken because the asbestos they thought could be a
3 potential health hazard?

4 MR. HAINES: Object to the form of the question.

5 MR. FERNANDEZ: He is asking if you know why the
6 company took these precautions. Did the company ever tell
7 you why?

8 THE WITNESS: They never told us why.

9 MR. DUBIN: Q. Was it your understanding that it
10 was because the asbestos was a potential health hazard?

11 A. No, not necessarily.

12 Q. Then why else would they do all of this?

13 MR. HAINES: Object to the form of the question.

14 MR. DUBIN: Q. What was your understanding of why
15 else they would do all of this?

16 A. Because I thought that all along that the
17 government was making them do it.

18 Q. Did you get the impression the company was
19 concerned with protecting the health and safety of the
20 workers in King City?

21 A. To some extent.

22 Q. What do you mean by that?

23 A. Can I elaborate on this?

24 Q. Yes.

25 MR. FERNANDEZ: He is asking what you mean by that.

1 THE WITNESS: When I initially started working
2 there at the plant in 1970 there was a bag chair and bagger
3 on either side of you. You put a bag on it, filled it, and
4 you put another bag on this one and filled it. And there
5 was high concentrated dust all around you. This was before
6 they did any enclosing of any of the equipment at all. So
7 bag would blow and you would just have dust flying all over
8 the place.

9 There was occasions where if management deemed that
10 they needed the product in a hurry, they would actually ask
11 us to take our break on that bagger. You would actually be
12 sitting on that chair bagging, having a coke, eating a
13 sandwich or whatever, with all this dust going around you.
14 Now the next day if they didn't need that product in such a
15 hurry and they caught you working through there without your
16 respirator on, you would get wrote up.

17 So at times safety was just a matter of
18 convenience. So the rules seemed to change from day-to-day.

19 MR. DUBIN: Q. And did the safety measures that
20 the company took change over time?

21 A. I'm sorry?

22 Q. Did the safety measures that the company took
23 change over time?

24 A. Did they change over time?

25 Q. Yes, did they change over time? Did they

1 develop during the time you were at the company?

2 A. I'm not sure I understand your question.

3 Q. Let me rephrase it.

4 Did the company improve its safety measures over
5 the time that you worked there?

6 A. Did they make an effort to like reduce dust
7 and things like that?

8 Q. Reduce dust, add additional precautions.

9 A. Yes, they did.

10 Q. That included separating off the bagging area
11 in a different room?

12 A. Yes.

13 Q. Okay. So if a bag exploded the dust wouldn't
14 get out to the rest of the facility?

15 A. That's correct.

16 Q. What do you know about George Navarro?

17 MR. FERNANDEZ: Objection, calls for a narrative.

18 MR. DUBIN: Q. Are you friends with him outside of
19 work?

20 A. Am I friends with him outside of work.

21 Q. Yeah. Do you see him socially? Do you know
22 him well?

23 A. The plant shut down on June 13 of this year.
24 And in that time span I think I've seen George like maybe
25 four times.

1 Q. How long did you work with Mr. Navarro?

2 A. Twenty-five years or so. Somewhere in that
3 area. I'm not really sure but it's at least 20 plus.

4 Q. You ever talk to Mr. Navarro about his
5 impressions of the company or his remembrance of what went
6 on there?

7 MR. FERNANDEZ: Other than in my presence?

8 MR. DUBIN: Other than in your presence.

9 Q. Without the presence of the Kelly-Moore
10 lawyers sitting over there.

11 A. I'm not sure I understand your question.

12 MR. FERNANDEZ: Did you ever talk to George Navarro
13 about the conditions of the plant, other than meeting with
14 just me.

15 MR. DUBIN: With just him, yes.

16 THE WITNESS: No, there was lots of other times
17 that we discussed issues previously to meeting
18 Mr. Fernandez.

19 MR. DUBIN: Q. And what's your -- what did you
20 discuss? What did Mr. Navarro tell you?

21 A. As far as safety issues?

22 Q. Yeah, safety issues.

23 A. Well we always -- one thing that always came
24 up is like I said just awhile ago is like safety was a
25 matter of convenience. I mean, one day you could do

1 something, next day you get wrote up for it. No, I mean,
2 there was several issues that we discussed, not just
3 necessarily safety.

4 Q. What else that you recall?

5 A. Well certain things that were going around the
6 plant, things that would happen that we thought that maybe
7 should have been handled differently or things that we --
8 ways we thought that maybe they could improve production or,
9 you know, things of that nature.

10 Q. Do you ever tell people at the plant about --
11 when you were working there, about concerns that you had
12 about certain safety issues?

13 A. Yes.

14 Q. Okay. And were those people -- did they ever
15 make any changes based on the concerns that you expressed?

16 A. Did they make any changes on the things that I
17 had suggested to improve something?

18 Q. Yeah. In other words, did they ever listen to
19 you?

20 A. Yeah, they would listen.

21 Q. Can you think of any examples when they made a
22 change based on your suggestion?

23 A. No. The question was if they would listen. I
24 don't remember them changing anything. I'm not saying that
25 they didn't, I just don't recall.

1 Q. Okay. Who did you discuss with at the plant
2 safety concerns that you may have had that you recall?

3 A. Bob Kronkhyte, Daryl Garcia, Dick Marsten,
4 Larry Larrison, John Myers, Fred Lawson, Herman See, Ray
5 Groggen. You want me to go on?

6 Q. No.

7 Do you -- what was your impression about Kronkhyte
8 as a person?

9 A. Bob and I had a good rapport. He's a -- he's
10 the kind of guy that would -- again, this is my opinion,
11 right?

12 Q. Sure.

13 A. He would stand and look at you and he'd lie to
14 your face and he knew that you knew that he was lying to you
15 but still he expected you to believe it. He was -- he had a
16 quick wit about him. But I personally didn't trust him.

17 Q. What do you think Bob Kronkhyte lied to you
18 about?

19 A. Something had transpired years go and he said
20 somebody had come up and talked to him about something that
21 had happened, that someone had approached him about
22 something that had happened and that he felt that I was at
23 fault for it. And then when I went in to discuss the issue
24 with the person that supposedly told him, he said he had
25 never even spoken to Bob. There is a lot of things that Bob

1 did over the years that -- he would kind of like what I
2 would call Peter Pan psychology. He would tell you what you
3 wanted to hear and then he would walk away. And his answer
4 for everything was if you were dissatisfied, don't let the
5 gate hit you in the ass. That was basically his come back
6 for everything.

7 But I mean -- I kind of liked the guy but I just
8 didn't trust him.

9 Q. How about Daryl Garcia, what do you remember
10 about Daryl Garcia?

11 A. Daryl is basically -- he was a good guy.
12 But -- I am not going to say that. How am I -- he didn't
13 have the intestinal fortitude to stand up to upper
14 management. You would tell him, you would point things out
15 to him and he would sit there and do this, nod to you. And
16 then he would go away and that would be the end of it. He
17 was basically supposed to be -- supposed to be in charge of
18 safety but he wasn't necessarily in charge of it.

19 Q. Who did you think was in charge of safety by
20 the -- really in charge of safety during the time when Daryl
21 Garcia was in that position?

22 A. Well he had the title.

23 Q. Right.

24 A. But he couldn't often dictate what was going
25 to happen.

1 Q. And what about John Myers, what do you
2 remember about him?

3 A. John basically was a good person. But again,
4 he was -- and I guess maybe all upper management is like
5 that. He never really took the time to talk to the -- the
6 people on the line. He would -- whatever his supervisors
7 told him, he would -- had no reason to not believe them so
8 he went by whatever they said. He never actually took the
9 time to go down and talk to the hourly people to find out
10 what was actually going on.

11 Q. By the supervisors, you mean the supervisors
12 within the mill?

13 A. Correct. And maintenance.

14 Q. What about Fred Lawson, what did you --

15 A. Fred Lawson, I put all my trust in him. He
16 was a good guy. He went to fight for his guys. He wouldn't
17 take any crap from anybody. If he thought his guys were
18 right, he wouldn't take any crap from anybody.

19 Q. And what position did he have?

20 A. He was maintenance foreman. He was there
21 basically like from 1978 till about '85. I think when we
22 became KCAC, he left.

23 Q. Was there any change -- when you transitioned
24 in 1985 you became an employee of KCAC, correct?

25 A. That's correct.

1 Q. Did you notice any change in the operations or
2 the way things were done?

3 A. Well, I know Bob Kronkhyte came back and he
4 had a different position with the company then. But
5 really -- there wasn't really any major changes. There was
6 changes as far as people maneuvering to different positions
7 within the company. There was a few people that were let go
8 or went on their own. But as far as the operation of the
9 plant, there wasn't any significant change that I could see.

10 Q. In terms of, yeah, day-to-day, safety,
11 anything like that, no significant change with the sale?

12 A. Not that I saw really.

13 Q. Did you ever talk to anybody else from Union
14 Carbide who wasn't located at the facility? I know we
15 talked about the people involved with the safety --

16 A. Mr. Piersall.

17 Q. Mr. Piersall. Was there anybody else that you
18 recall talking to who wasn't from the facility?

19 A. Speaking of safety issues?

20 Q. Anything. Do you ever recall having any
21 dealings with people who weren't located at the --

22 A. Yes.

23 Q. Who do you recall?

24 A. John Atonucci I believe his name was.

25 Q. What do you recall discussing with

1 Mr. Atonucci?

2 A. What do I recall?

3 Q. Yeah. What do you recall discussing with him?

4 A. When Joe came down I believe he came down from
5 Niagra Falls but I am not sure about that but he was
6 involved with the plant expansion, R & D expansion. He was
7 an engineer. We really -- nothing specific. It was just
8 kind of like guy talk. Because at that time I was already
9 involved as, well, the maintenance department. So we talked
10 about some of the things, the equipment that they were going
11 to put in, the expansion involvement and things of that
12 nature.

13 Q. Do you recall ever discussing with anybody who
14 wasn't from -- wasn't from the facility about safety issues
15 at all?

16 A. Other than Mr. Piersall?

17 Q. Other than Mr. Piersall.

18 A. If I did, I don't remember.

19 Q. Do you ever recall meeting any doctors from
20 Union Carbide?

21 A. Oh, yeah, yeah. I met a doctor -- let's see.
22 What was his name. He had like -- his parents were
23 originally from Russia, he was from Philadelphia, never
24 owned a car, all he did was cycling and that's how -- really
25 how I met him. He had to change his name from a Russian

1 name to a -- he Americanized it. But I can't remember what
2 his name was now.

3 Q. How about Arthur Valdez, do you have any
4 memories of Arthur Valdez?

5 A. Yes.

6 Q. What do you -- where -- how long did you work
7 with Mr. Valdez?

8 A. I believe I worked with him in excess of 20
9 years also.

10 Q. Other than conversations you had with just you
11 and your attorney present, do you recall ever discussing any
12 aspects of safety at the King City mill with Mr. Valdez?

13 A. Well for the longest time Art and I really --
14 he was like what I would say, he was kind of like -- between
15 a stranger and a friend. He was an acquaintance. He was a
16 fellow employee. But he was not someone that I associated
17 with off the plant site. And the fact that he worked shift
18 work and I was on straight days, I didn't see him that
19 often.

20 Q. Uh-huh.

21 A. And Art was kind of like a surreal type person
22 that kind of -- I didn't really associate with him that much
23 at the plant. There were times where I would have to go to
24 his work location and maybe do some sort of work so I would
25 have to make contact with him. But other than that, I mean,

1 I really didn't socialize with Art that much.

2 Q. Do you have any specific recollections of
3 conversations you have had with him about safety at the King
4 City mill, with the same proviso about your lawyer?

5 A. In the presence of counsel?

6 Q. No.

7 MR. FERNANDEZ: No, other than.

8 MR. DUBIN: Q. Other than that.

9 A. At times, yeah, I'm sure one time or another
10 we must have discussed some issues.

11 Q. Do you recall anything specifically sitting
12 here today?

13 A. No, not -- I can't really be specific.

14 Q. Okay. Have you ever met a gentleman by the
15 name of Ricky Baker?

16 A. Years ago. Years and years ago.

17 Q. How did you meet him?

18 A. He played on the same baseball team that I
19 did. That would have been back in the mid '70s or so.

20 Q. Do you know if he still lives in the
21 community? In this area, King City?

22 A. I know he is still in the area.

23 Q. Do you have any contact with him?

24 A. Oh, jeez, I haven't seen him since the '70s.

25 Q. Let's go a little bit into your employment

1 background.

2 When did you -- where did you grow up?

3 A. I grew up here in the valley.

4 Q. And where were you employed prior to working
5 for -- at the King City mill?

6 A. I was in the service.

7 Q. What branch of the service?

8 A. United States Army. Ninth division, Second
9 39th Charlie Company.

10 Q. Where were you stationed?

11 A. After I got back from Vietnam I was sent to
12 Fort Scott, Kansas.

13 Q. And when did you serve in Vietnam?

14 A. When was I in Vietnam?

15 Q. Yes.

16 A. 1968.

17 Q. And have you had any major health problems
18 ever? That you know of.

19 A. Yes.

20 Q. What major health problems have you had?

21 A. Well when I was like five years old I had
22 tuberculosis, I was hospitalized for a year.

23 Q. To your knowledge, have you had -- has any
24 doctor ever told you that you had any lasting effects from
25 that tuberculosis at all?

1 A. No.

2 Q. Anything else?

3 A. Do you count getting shot up in Vietnam --

4 Q. Yes.

5 A. Yeah. That was a severe one.

6 Q. Where were you wounded?

7 A. All over. It was a land mine that blew up in
8 front of me.

9 Q. Do you have any -- do you know whether you had
10 any damage to your lungs at all from that?

11 A. I had a piece of shrapnel that went through my
12 chest, through my lung and stopped about a millimeter away
13 from my heart. I had a major artery that was cut in my
14 chest. And --

15 Q. It's okay. If you don't want to talk anymore
16 about this.

17 A. Let's go on.

18 Q. Let's move on from there.

19 MR. DUBIN: Why don't we just take a five-minute
20 break.

21 MR. HAINES: Sure.

22 (Recess held.)

23 MR. DUBIN: Q. I just have a few small questions
24 to finish up.

25 A. Sure.

1 Q. I don't know if you are able to do this or not
2 but do you have any estimate of the total number of people
3 you've worked with over the years at the King City mill?

4 MR. FERNANDEZ: Different individuals?

5 MR. DUBIN: Yes.

6 Q. How many different individuals?

7 A. Oh, jeez, I couldn't begin to tell you that,
8 no. I wouldn't have any idea. I'd say -- no, I would just
9 be guessing.

10 Q. Is it hundreds?

11 A. It probably would be at least, yeah.

12 Q. And how many of those do you think you are
13 still in contact with? How many people?

14 A. Do I still maintain contact with?

15 Q. Yes.

16 A. On a regular basis?

17 Q. No. Occasional social contact.

18 A. I'm pretty much of an introvert. I really
19 don't socialize with anyone. On occasion I'll see someone
20 who I worked with occasionally. The other day I was walking
21 in the supermarket down here and I ran into someone that I
22 had worked with for years but I hadn't seen her in months.
23 And a few months ago I was at an eatery in Salinas and this
24 other woman walked up on me and I hadn't seen her in a year
25 and a half, couple of years. It's like I said, I really

1 don't see anyone on a regular basis. The only people that I
2 would see on a regular basis would be like Jim Plaskett
3 because he lives in the same community that I do. And it's
4 not like I see him to socialize, it's just in passing, like
5 be driving the opposite direction I'm going, or you know. I
6 don't really socialize with anyone.

7 Q. And again, not -- with the exception of people
8 we already discussed and not in the presence of your lawyer,
9 have you discussed King City safety or health issues with
10 anybody else recently?

11 A. Other than --

12 Q. Other than with -- I've asked you about some
13 conversations with Mr. Navarro, Mr. Valdez.

14 A. Other than them, no, I haven't.

15 Q. Did you talk to anybody else about whether
16 they have been contacted, other than Mr. Navarro and
17 Mr. Valdez again, about whether they have been contacted by
18 Plaintiff's attorneys?

19 A. I know like this woman that I ran into the
20 other day at the market, she asked me something about hey,
21 what's this Art has going, and I said well, you know, the
22 person to talk to would be Art. And that's all. And then
23 I -- you know, we exchanged pleasantries and went on our
24 way. She wasn't always one of my favorite people.

25 Q. Do you know who she was? What her name was?

1 A. Petra Mansfield. It's Mansfield now.

2 Q. And what did she mean by what Art has going,
3 to your understanding?

4 A. She just said something that I hear Art is
5 involved in some kind of lawsuit. And I said well that's
6 something you'll have to discuss with Art.

7 Q. Are you paying your attorney, Mr. Fernandez?

8 A. No, I am not.

9 Q. Do you know if anybody else is paying him?

10 A. I --

11 Q. For his time.

12 A. Not that I am aware of.

13 * Q. Do you have any anticipation that you will be
14 required to pay your attorney?

15 MR. FERNANDEZ: Objection, I think you're right up
16 against attorney/client privilege at this point. I'm going
17 to instruct my client not to answer.

18 MR. DUBIN: Q. Why do you have an attorney?

19 A. I never solicited an attorney.

20 Q. I understand. You haven't filed any sort of
21 lawsuit, right?

22 A. No. I am just concerned that since I left the
23 plant, I am just looking out for my well-being I guess
24 because nobody else is going to.

25 Q. Okay. What do you mean by that?

1 A. Well, I mean, there is -- you know, over the
2 years you hear about asbestos this, asbestos that. And I'm
3 just looking out for myself for the future in case there is
4 any complications. Hopefully there won't be. But it's like
5 if you are going to err, you need to err on the side of
6 caution. And I am looking out for myself because nobody
7 else is going to.

8 Q. Do you mean if some day you have to file a
9 lawsuit?

10 A. If I should get ill at some time or another.
11 I am not -- can I elaborate on this?

12 MR. FERNANDEZ: I think you answered the question.

13 MR. DUBIN: Q. What do you mean by over the years
14 you hear about asbestos this, asbestos that?

15 A. Well, you know, through the media. You hear
16 about the asbestos -- asbestos and dust and how -- when I
17 first started working there, I mean, they were making
18 beaucoup, beaucoup monies there. And then as time
19 progressed it was like an asbestos scare throughout the
20 country. And the government became a lot more stringent
21 than what they were originally. And over the years you just
22 hear about potential for asbestos to be there. I mean,
23 within the last few years they had like a big asbestos
24 here -- scare at one of the schools. They found out that
25 some of the insulation was asbestos and they went in and had

1 a big old scare about that. I mean, they shut the school
2 down and had people come in and take all the asbestos off.
3 Things like that. So I am obviously -- I mean, somewhere
4 there's got to be some truth to it. There's got to be some
5 merit to it. So like I said, I am looking out for my
6 well-being.

7 Q. Do you understand that part of this
8 information, part of this asbestos scare was in the 1970's?

9 A. Well even now it goes on.

10 Q. Right.
11 Do you recall hearing about that at all in the
12 1970's?

13 A. No. I wasn't actually -- I -- I recall
14 hearing the concerns for asbestos, government regulating it,
15 and then as time progressed it seems to get more severe I
16 guess.

17 Q. In what way do you think appearing for a -- as
18 a witness for Kelly-Moore helps you protect your future?

19 MR. FERNANDEZ: I'm going to object as assumes
20 facts not in evidence. It's argumentative. Lacks
21 foundation.

22 MR. DUBIN: Q. I believe you indicated that part
23 of what you are -- you want -- reason for participating here
24 is you want to ensure your -- protect your future in case
25 something happens.

1 MR. HAINES: That's not what he said. He said why
2 he retained a lawyer, which has nothing to do with what he
3 is doing here today.

4 MR. FERNANDEZ: Which does misstate his prior
5 testimony.

6 MR. DUBIN: Q. Why do you think you need a lawyer
7 now rather than some day in the future if you ended up
8 getting sick? Why do you need a lawyer now?

9 MR. FERNANDEZ: To the extent that answering that
10 question would require my client to reveal any conversations
11 he's had with me, it infringes on the attorney/client
12 relationship --

13 MR. DUBIN: I understand.

14 Q. I am not asking about your conversations with
15 the lawyer, I'm asking about your own personal feelings.

16 A. So what are you asking me?

17 Q. Why did you think you needed a lawyer now
18 rather than if you got sick some day, find a lawyer, bring a
19 lawsuit? Why now?

20 A. No, I think I rather do it now when I think
21 I'm healthy. And just make them aware that yes, somewhere
22 down the future, you know, there is a potential for -- for
23 an illness there. I am not saying -- I am hoping there
24 isn't but the potential is always there. I mean, being
25 exposed to asbestos for 33 years, there might be some

1 residuals there. No matter what precautions you take, there
2 could be something there.

3 Q. So what changed your opinion that before you
4 weren't concerned about your health and now you are?

5 MR. HAINES: Object to the form of the question.

6 MR. FERNANDEZ: I think it misstates his prior
7 testimony. He said he raised health concerns with
8 management while he was still an employee.

9 MR. DUBIN: Q. You indicated before that you
10 weren't concerned about your health because you thought that
11 the asbestos was safe. Do you recall that?

12 MR. HAINES: Object to the form of the question.
13 Improper impeachment.

14 MR. DUBIN: Q. You can answer.

15 MR. FERNANDEZ: I am still going to object, the
16 record will speak for itself as to what he testified to
17 before. If you want to ask him a question, go ahead.

18 MR. DUBIN: Q. At some point did you think
19 asbestos, the asbestos you were exposed to was safe?

20 A. Let me see if I understand your question. You
21 are asking me if I thought at one point that the asbestos
22 that I was involved with --

23 Q. Was safe.

24 A. -- was safe?

25 Q. Yes.

1 A. Yes.

2 Q. And what changed that view? Why are you
3 concerned about your health now?

4 A. Well, hearing from the media that all -- all
5 asbestos could be lethal at one time or another if you are
6 exposed to enough, you know, overexposed to it, it could be,
7 you know, detrimental to your well-being. And I know at
8 times I was overexposed to it. On -- on -- on lots and lots
9 of occasions. So the potential is there for something to
10 happen.

11 Q. And when did you hear this in the media?

12 A. Oh, over the years. Not just recently. Over
13 the years. You know, you -- can I go on with this?

14 Q. Sure.

15 A. You hear about people who work like in tire
16 shops getting overexposed to asbestos from brake shoes.
17 People who work in the shipyards, people who do insulation,
18 you know, and the list goes on. So I mean, you kind -- a
19 light bulb goes off in your head and you think to yourself
20 which asbestos were they exposed to. I mean, you don't
21 know. You know it was asbestos but is it the type that is
22 supposedly isn't a carcinogen or is it the other type. We
23 have been told all along from day one that the asbestos that
24 we were exposed to was a non carcinogen. But like I stated
25 previously, if you get overexposed to anything, too much

1 exposure at one time or another could be detrimental to you.
2 And it's like I stated, lots and lots of occasions there was
3 times that I was just completely saturated in asbestos.
4 There was times I would be in the packaging department
5 wearing that small respirator that they furnished us with
6 and the bag would blow and I would actually have a mouth
7 full of asbestos from all of that stuff just blowing my
8 respirator off. And it's like what can you do then. You
9 are taking a big old breath and you can literally feel that
10 thing going down your nose and you are coughing it up. So
11 chances are there is going to be residues in there. So like
12 I stated, I am looking out for myself because I know John
13 Doe isn't going to.

14 Q. Do you -- again, these media reports that you
15 are talking about, about mechanics and people in shipyards,
16 were these things you ever saw while you were still working
17 at the facility, or still working at the mine -- the mill.
18 Sorry.

19 A. I was aware of that, yes.

20 Q. And have you ever been to the mine?

21 A. Oh, yes, on more than one occasion.

22 Q. Did you work at the mine?

23 A. On occasion I would.

24 Q. And when you were working at the mine did you
25 wear a respirator?

1 A. No.

2 Q. What did the mine look like?

3 A. It was just like a big -- for lack of a better
4 word, a big hole in the ground, it was a big pit. And they
5 would go in there with big machinery and dig it out and
6 bring it down and they would run it through like I will call
7 it a shaker, and it would just shake all the rock off and
8 get the asbestos fibers down in big piles, and they would
9 put it in a front end loader and put it into trucks and load
10 it down here.

11 Q. How frequently were you at the mine?

12 A. Not as often as other people. Because --

13 MR. FERNANDEZ: Just how often were you there. If
14 you can answer that.

15 THE WITNESS: How often was I there. Not often.

16 MR. FERNANDEZ: Once a year, once a month?

17 THE WITNESS: I was there on occasion. Maybe once
18 a year, twice a year.

19 MR. DUBIN: Q. Is that -- is that your
20 understanding about how often mining would occur?

21 A. No.

22 Q. How often would mining occur?

23 A. Mining occurred on a regular basis, basically
24 right after the rainy season was over. March, April, and
25 they would continue to mine until October when they changed

1 the daylight savings time. And that was every year.

2 Q. Okay. So that's once -- one period of mining
3 per year?

4 A. That's correct. Continuous.

5 MR. DUBIN: All right. I don't have any further
6 questions right now. So I'll pass.

7 MR. HAINES: I'm going to move down here so I can
8 see you when I ask questions. It is kind of a personal
9 habit.

10

11 EXAMINATION BY MR. HAINES

12 MR. HAINES: Q. You need to take a break or
13 anything?

14 A. No, I am fine.

15 Q. Okay. I don't think I will be very long but
16 if you need a break again, let me know. I will be happy to.

17 Let me back up a little bit. And again, I am
18 Patrick Haines. I represent Kelly-Moore in this case. And
19 I just have a few questions for you.

20 I want to start a little bit talking about your
21 background.

22 Where were you born, sir?

23 A. I was born in Soledad, California.

24 Q. What year?

25 A. 1947.

1 Q. And did you grow up in the Soledad area?

2 A. That's correct.

3 Q. Is that where pretty much your family lived
4 during the years you were growing up?

5 A. That's the only place we lived.

6 Q. Are you married today?

7 A. Yes.

8 Q. Do you have any children?

9 A. Yes, I do.

10 Q. How many children?

11 A. Two children.

12 Q. How old are your children?

13 A. My son is 34 and my daughter is 35.

14 Q. Do you have any grandchildren?

15 A. Yes.

16 Q. How many of those?

17 A. Seven.

18 Q. You don't look like a grandfather.

19 A. What are we supposed to look like?

20 Q. Were you in the military -- you were in the
21 military. The Army?

22 A. That's correct.

23 Q. What years?

24 A. I was drafted in 1967 and I ETS in 1969.

25 Q. So you were a veteran in the Vietnam War?

1 A. Yes, I was.

2 Q. And you began to work for Union Carbide in
3 1970, right?

4 A. August of 1970.

5 Q. My questions I wanted to focus on in that time
6 period from 1970 until Union Carbide sold the mine, which I
7 believe was around 1985, is that correct, and they
8 transferred to KCAC?

9 A. That's correct.

10 Q. Okay. During that time frame within the plant
11 were there times when in various operations you could see
12 visible asbestos dust in the air from various operations?

13 A. Constantly.

14 Q. Was that in a certain part of the plant or
15 throughout the plant?

16 A. You could see dust just about anywhere.

17 Q. Was the area that you thought was the heaviest
18 concentration, was that the bagging area?

19 A. Packaging area, correct.

20 Q. That's where they are actually taking the
21 product and putting it into sacks?

22 A. That's correct.

23 Q. What was it that made that area much more
24 dusty than the rest of the plant?

25 A. The machinery itself, the facts that bags were

1 constantly blowing. Basically that was it.

2 Q. You mean the bags when you would put the
3 material in there they would just sometimes pop --

4 A. That's correct. Maybe they weren't perforated
5 as much as they should and the bag would just explode. And
6 there would just be product in the air.

7 Q. Have you ever seen that effect that sometimes
8 when you have light shining through you can see dust in the
9 air that you wouldn't ordinarily be able to see with the
10 naked eye?

11 A. Like a hole in the wall or something --

12 Q. Yeah.

13 A. Yeah.

14 Q. And that happened in the plant too?

15 A. The plant was full of holes.

16 Q. And you could see dust rising in the air?

17 A. Just floating there.

18 Q. Was there dust on areas such as the changing
19 rooms where you could change your clothes?

20 A. There was dust constantly all over.

21 Q. Okay.

22 A. I mean, it was just a matter of identifying
23 it. But there was always dust.

24 MR. FERNANDEZ: Just try to answer his question.

25 MR. HAINES: Q. I want to talk a little bit about

1 the respirators or the masks that were given to you. I
2 think you said in the early years they were different. They
3 were the disposable types of masks?

4 A. That's correct.

5 Q. Were they just like a rubber band with a
6 paper --

7 A. Right.

8 MR. DUBIN: Objection, form.

9 MR. HAINES: Q. Like a 3M type of dust mask?

10 MR. DUBIN: Object to form.

11 MR. HAINES: Q. He is just objecting.

12 A. That's correct.

13 Q. You would wear them what, just one day?

14 MR. DUBIN: Objection, form.

15 THE WITNESS: That's correct.

16 MR. HAINES: Q. Would the masks clog up?

17 MR. DUBIN: Objection, form.

18 THE WITNESS: Yes, they would.

19 MR. HAINES: Q. With the asbestos fibers?

20 MR. DUBIN: Objection, fibers.

21 THE WITNESS: Sometimes it would get wet and get
22 clogged up, depending on what you were doing.

23 MR. HAINES: Q. At some point did the company
24 provide you with different type of respirator protection?

25 A. It was shortly after I started working there

1 they changed to respirators.

2 Q. What were those like?

3 A. They were more bulky and we were told they
4 were more proficient. Efficient.

5 Q. Had filters in them?

6 A. Yes, they did.

7 Q. Were you ever given a mask where you had like
8 an air hose connected to you that supplied you with oxygen?

9 A. That was -- they had one. And that was for
10 the guy who was actually sitting on the bagger chair. And
11 it was like -- like something an astronaut would wear. Big,
12 heavy, bulky thing. And it had like a long tube probably
13 like maybe one inch, inch and a half in diameter and it was
14 connected to a little compressor that actually took air
15 from -- ambient air and just filtrated it and pumped it into
16 your helmet.

17 Q. What was the bagger chair?

18 A. It was a chair where you sat and you faced the
19 equipment that turned -- where all the buttons were, the
20 control panel was and you had a bagger in either chair -- on
21 either side of you and you put a bag on this bagger and
22 pushed the button and it would fill up and when it hit the
23 designated weight it would fall off and go up a conveyor to
24 a pelletizer.

25 Q. Did you ever sit in that chair yourself?

1 A. Yes, I did for three years. Two and a half
2 years.

3 Q. Were you given that respirator that had the
4 air supplied to it when you were given that job?

5 A. Yes. We used it for not an extended period --

6 MR. FERNANDEZ: He is asking whether you used it.

7 THE WITNESS: Yes, I did use it.

8 MR. HAINES: Q. Did you use it the whole time you
9 were in that chair?

10 A. The whole time I was in packaging?

11 Q. No, that you were in the chair.

12 A. No.

13 Q. Why not?

14 A. Because as time progressed I was still sitting
15 in that chair but they did away with that piece of
16 equipment.

17 Q. They did away with actually the air supplied
18 respirator?

19 A. That's correct.

20 Q. Did the management tell you why they did that?

21 A. Because it was just too bulky and just too
22 inconvenient for the operator.

23 Q. And I think you told us early on in your
24 career you were actually told when you went on breaks to
25 take your break in that area?

1 A. On occasion we would be. It wasn't something
2 that happened all the time but it did happen.

3 Q. Were you provided with clothing to wear in the
4 plant?

5 A. Was I provided with clothing? Protective
6 clothing?

7 Q. Yeah, coveralls or overalls or anything like
8 that?

9 A. Yeah, that was several years after I started
10 working there that the company provided coveralls.

11 Q. When you first started you just wore your
12 street clothes?

13 A. That's correct.

14 Q. Walk in, walk out with the same clothes?

15 A. That's correct.

16 Q. And then after awhile they gave you some type
17 of what were they, like cotton overalls?

18 A. Correct. Originally they were white, and then
19 as years progressed they changed to a blue.

20 Q. Okay. And did these overalls cover your
21 entire body or were your arms open?

22 A. Well they didn't cover your head.

23 Q. Okay.

24 A. That would encompass part of your body.

25 Q. Right.

1 A. No, they were -- like you would see something
2 a mechanic would wear. They were open, just a button, they
3 were open, the sleeves had a button on the end and just
4 regular pant legs on them. So it wasn't like you were
5 totally enclosed or anything.

6 Q. Did you wear your regular clothes underneath
7 that?

8 A. Yes, we did.

9 Q. At the end of the day you would take off the
10 overalls and go home again in the clothes that you walked
11 into the plant with?

12 A. Yes.

13 Q. Were you aware that certain employees at the
14 plant had taken asbestos from the plant and were using it to
15 insulate their attic in their houses?

16 A. I didn't know the people individually but I
17 knew they had it.

18 Q. How did you find that out?

19 A. I was sent -- I was sent to two different
20 locations to help clean up the house is.

21 Q. What were the locations that you remember?

22 A. One was here in King City. And you know, I
23 can't remember the address but it's just down the road from
24 here. And the other one was located on 11th Street in
25 Greenfield.

1 Q. When you say clean out the house, what exactly
2 were you cleaning?

3 A. The people who had insulated their homes with
4 asbestos were previous employees of the company, and they
5 had actually insulated their attic with asbestos. So we had
6 to go in the attic, vacuum cleaners, little brooms, dust
7 pans and clean everything off.

8 Q. What type of protective equipment did the
9 company give you when you did that job?

10 A. The same stuff that was issued to us at the
11 plant, respirators and coveralls.

12 Q. Okay. Did they give you any additional
13 training on how to remove asbestos?

14 A. No. No.

15 Q. What year was that approximately?

16 A. It must have been in the '80s but I'm not
17 certain.

18 Q. Was it before KCAC taking the company?

19 A. I'm not certain.

20 Q. Okay. When you went to do your medical exams
21 that the company provided for you, did you have to pay for
22 those exams yourself?

23 A. No.

24 Q. Were you ever given a written report that gave
25 you the details of the doctor's opinions as to your

1 examination?

2 A. A written report?

3 Q. Yes, sir.

4 A. No. Like I stated previously, it was in a
5 form letter.

6 Q. And at least in the first part of your career
7 it was really only a chest x-ray and there were no lung
8 tests, as far as pulmonary function tests?

9 MR. DUBIN: Objection, form.

10 You can respond.

11 THE WITNESS: When I initially got there that's all
12 it was. And years later it went on to pulmonary.

13 MR. HAINES: Q. Can you tell us at what point --
14 was it the 1970's or the 1980's that they switched over, do
15 you recall?

16 A. No, I'm not really certain when it was.

17 Q. Okay. When the OSHA or the MSHA government
18 inspectors would come to the plant, did the plant operate
19 the same way as it did when they weren't in the plant?

20 MR. DUBIN: Objection, vague. Form.

21 Go ahead.

22 THE WITNESS: Let me see if I understand your
23 question properly. You are asking me if when MSHA or OSHA
24 came around if the plant was still in its normal operation?

25 MR. HAINES: Q. Yes.

1 A. Not necessarily, no.

2 Q. How so?

3 A. There was times where if we were making a
4 product that created a lot of dust, that the plant would
5 actually stop and switch products to something that wasn't
6 as near as dusty.

7 Q. Was there something called misters in the
8 plant?

9 A. Misters slash foggers, yes.

10 Q. What was the purpose of those foggers?

11 A. The theory behind it was we set them up high
12 on the ceiling of the -- both packaging rooms and we install
13 timers on them with a high pressure water on them, and it
14 would come on periodically and send out a very, very fine
15 mist of water. And supposedly the theory it was supposed to
16 saturate the dust and make it fall to the ground and create
17 less dust.

18 Q. Did they run constantly or continuously in the
19 plant?

20 A. Initially yes, they did. But that stopped
21 within a couple of weeks I'd say. That stopped because it
22 would just -- it was just creating a mess. The operators
23 would just get -- through the course of a day they would
24 just get saturated in water. The bags that they were
25 utilizing for the product would get saturated with water and

1 it would start blowing up. So as a matter of convenience
2 they just -- the operators would just go throw the switch,
3 shut the power off to the misters. And over a period of
4 time they just stopped using them completely.

5 Q. Did management make sure that the misters were
6 on when the OSHA inspectors came to visit?

7 A. Yes, they did.

8 Q. What was the attitude of the corporation as
9 far as safety? If you had a complaint about safety and you
10 didn't like how the plant was being operated, what did they
11 basically tell you your options were if you don't like the
12 way something was in the plant?

13 MR. DUBIN: Objection, form.

14 THE WITNESS: Can I answer?

15 MR. DUBIN: Yes.

16 THE WITNESS: Well, like I said previously, I know
17 Mr. Kronkhyte, his answer right off the top of his head was
18 well, if you don't like the way things are, don't let the
19 gate hit you in the ass. And there was other times where I
20 would go and speak to other people up in upper management
21 and their answer would be well, we'll see what we can do
22 about it. And basically that's the end of it.

23 MR. HAINES: Q. If you or anyone else in the plant
24 ever had a concern about asbestos in the plant being
25 dangerous, what was the response from management at Union

1 Carbide?

2 A. Well they led you to believe that they would
3 look into the issue involved and try to resolve what
4 complaints you had. But lots of times it was like -- like I
5 said earlier, what I call Peter Pan psychology they would
6 just tell you what you wanted to hear and then walk out the
7 door.

8 Q. Did the management at Union Carbide ever tell
9 you that the asbestos that you were breathing could hurt you
10 or cause cancer?

11 A. I stated previously from day one they assured
12 us that the asbestos that we were working with, short fiber
13 asbestos, was not a carcinogen and not detrimental to our
14 health.

15 Q. Was there something called tailings that the
16 plant had that were left over scrap from the asbestos mining
17 process?

18 A. Yes.

19 Q. Throughout your career what was the
20 traditional way for the disposal of that product?

21 A. Well, the way it worked is the tailings are a
22 residue of refined product. This is stuff that wasn't
23 usable, they couldn't sell. And it would just get dumped in
24 the back. You would have a massive pile of tailings in the
25 back. And what they would do is come in with a big front

1 end loader and they would take it over the hill and bury it.

2 Q. How deep are we talking about being buried
3 there?

4 A. You know, I would be guessing. But I -- you
5 know, I'd say -- no, it would be strictly a guess.

6 Q. Okay. Did the company also sometimes bury
7 pallets of asbestos product back there?

8 A. Oh, on several occasions.

9 Q. Was there any way you could avoid breathing
10 asbestos dust if you worked in that facility?

11 MR. DUBIN: Objection, form.

12 Go ahead.

13 THE WITNESS: If you wore your respirator
14 constantly from -- from the day -- I mean, from the moment
15 you stepped on the property till the moment you drove off
16 the property, yes, then perhaps it was.

17 MR. HAINES: Q. And the company never told you
18 that you should do that, did they?

19 A. There was instances where this friend of mine
20 was actually told to take his respirator off. He was
21 walking out where supposedly it was a dust free area and he
22 was actually told to take his respirator off.

23 Q. Did you ever wear -- I think you said you wore
24 personal monitors for asbestos exposure?

25 A. That's correct.

1 Q. What would happen if you reported to
2 management or they observed that your asbestos monitor was
3 showing an overexposure?

4 A. What would happen?

5 Q. Yes, sir.

6 A. Well they put the monitor on you and then the
7 report wouldn't get back to you for a couple of weeks. Then
8 they would just tell you that you were overexposed. That
9 was it.

10 Q. Did they ever tell you if it was going on that
11 you should change the way you're working or do something
12 differently or anything like that?

13 A. Well, during the period of the monitoring,
14 when you were wearing the monitor on you, Paco would come
15 around and he would ask you what location were you at, and
16 he would document that time frame where you were at. And
17 when you got the report from them they would tell you where
18 from 8:00 in the morning till 10:00 in the morning you were
19 in the bagging room and it shows here that you had
20 overexposure or whatever. You know, so they were actually
21 able to tell you where you were at when you were overexposed
22 to it.

23 Q. Okay. Sir, I just want to -- I don't have
24 very much more. I just want to show you a couple of
25 photographs and see if you can identify them for me what the

1 photographs depict. If you can't, please tell me so.

2 MR. HAINES: Counsel, I don't have copies. If you
3 want to come over this side.

4 MR. DUBIN: Just hand them to me.

5 MR. HAINES: I will hand them to you first.

6 I'm going to mark the entire -- I better do them
7 individually. If I can borrow a sticky. First one I'm
8 going to mark is Exhibit 3. And this is a photograph.

9 (Whereupon, Deposition Exhibit 3, as
10 described in the index, was marked for
11 identification.)

12 MR. HAINES: Q. Sir, can you tell me what this
13 photograph depicts?

14 A. Well what you are looking at primarily here in
15 the white is the raw product before it's refined. And it
16 would be picked up by a front end loader and dumped in this
17 piece of equipment here.

18 Q. The shed looking thing there?

19 A. Correct. And it would fall down into a
20 conveyor and the conveyor would feed it into a big hopper
21 that was completely filled with water and it would have
22 these two big agitators in it and mix the product into a
23 slurry. And then from the -- from that particular hopper we
24 had these big pumps down there with 150 horsepower motors on
25 them and it would just get pumped over the hill into the

1 mill itself and begin the refining process.

2 Q. So this white pile we see, is that raw
3 asbestos before being refined?

4 A. That's correct.

5 MR. HAINES: Okay. The next photograph I'm going
6 to mark as number 4.

7 (Whereupon, Deposition Exhibit 4, as
8 described in the index, was marked for
9 identification.)

10 MR. HAINES: Q. Can you tell me what that depicts,
11 sir.

12 MR. DUBIN: Objection, form.

13 THE WITNESS: This seems to be -- it doesn't seem
14 to be, it is. This is part of the storage area in the
15 packaging department. And what you see here is a product
16 SG-145. The bags weigh approximately 102 to 104 and a half
17 pounds. Then there seems to be a great deal of residue here
18 on the floor. Those are actually pellets from I would say
19 from a broken bag in there probably. And it looks like they
20 would have to be one of the pellets in the back because you
21 can see it follows all the way -- the trail of product goes
22 all the way to the back.

23 MR. HAINES: Q. Was SG-145 a pelletized form of
24 asbestos?

25 A. Yes, it was. It wasn't one of the big money

1 makers.

2 Q. Okay.

3 MR. HAINES: I am marking as Exhibit Number 5 two
4 photographs.

5 MR. DUBIN: I'll just note for the record the
6 second photograph has handwriting. Before you were
7 identifying what the photograph is.

8 (Whereupon, Deposition Exhibit 5, as
9 described in the index, was marked for
10 identification.)

11 MR. HAINES: Q. Sir, can you recognize the items
12 depicted in these photographs?

13 A. Well the top photograph seems to be -- I get
14 the impression it is basically the same picture as this one
15 here.

16 Q. Okay.

17 A. And again, it's part of the packaging
18 department. The storage area and the packaging department
19 and the product is SG-145 and the bottom -- well they are
20 obviously paper bags and they are filled with powder and
21 not -- not pellets. I really -- it seems to be some
22 identification on there. Other than the writing in the
23 picture, I really couldn't say for sure that it is 244.

24 Q. You were talking earlier about bags being
25 blown out. Is that what you were describing or you were

1 testifying about earlier, shown in this picture here as far
2 as the bags being blown out?

3 A. Well, I can't actually tell if these bags are
4 actually blown. Because normally what we would do is if you
5 can see here, this seems to be the peeling part there,
6 that's the bags -- the whole front end would blow right off
7 and you just have product all over the place.

8 Q. Did that happen frequently at the plant?

9 A. If the operator wasn't careful it could happen
10 a lot. But if you had a person who was a responsible
11 individual and knew his job well, that shouldn't happen
12 often. It would still happen but not as frequently.

13 MR. HAINES: Okay. What I am marking as number --
14 Exhibit Number 6, two more photographs.

15 (Whereupon, Deposition Exhibit 6, as
16 described in the index, was marked for
17 identification.)

18 MR. HAINES: Q. Can you tell me what's in
19 photograph number 6.

20 A. Pictures of lockers.

21 Q. These appear to be the lockers that were in
22 the changing room at the facility?

23 A. That's correct.

24 Q. What was the original color of those lockers?

25 A. Gray. Gunmetal gray.

1 Q. Can you see kind of on the top a residue of
2 dust?

3 A. Yes.

4 MR. DUBIN: Objection, form.

5 MR. HAINES: Q. From your experience from working
6 in that plant was there asbestos dust on the lockers?

7 A. Absolutely.

8 Q. Was there dust, asbestos dust in every nook
9 and cranny of that plant?

10 A. I don't think you could find a spot that
11 wasn't.

12 MR. HAINES: Thank you, sir, for your time. That's
13 all I have.

14

15 EXAMINATION BY MR. DUBIN

16 MR. DUBIN: Q. First let me ask you, have you
17 discussed any of the issues that counsel for Kelly-Moore
18 asked you about today with him before today's deposition?

19 A. My issues --

20 Q. Any of the questions he asked you, any of
21 those topics, have you ever discussed those with him before
22 today's deposition?

23 A. Yeah, he showed me the pictures previously
24 today.

25 Q. Did he ever ask you about the working

1 conditions at the King City mill?

2 A. Yes, he had.

3 Q. Did he talk to you at all about whether or not
4 anyone at Union Carbide ever told you that Calidria asbestos
5 was safe? Did he ever talk to you about that?

6 A. I lost you.

7 Q. Did he -- did the lawyer for Kelly-Moore talk
8 to you about whether or not people told you asbestos was
9 safe?

10 A. Yes, he asked me if we had been told that.

11 Q. Okay. Do you know that the -- I take it you
12 don't know anything about the protections that Kelly-Moore
13 provided for its employees at its facility?

14 A. I don't know anything about Kelly-Moore.

15 Q. You don't know anything about what Kelly-Moore
16 knew or didn't know about the asbestos health hazards?

17 A. I wasn't aware of that.

18 Q. Were people required to wear respirators in
19 the areas where bags were stored and loaded, unloaded?

20 A. Portions.

21 Q. Do you know whether they would have been
22 required to wear respirators in those areas?

23 A. Which areas?

24 Q. In the areas of the photographs of 4 and 5,
25 Exhibit 4 and 5. Would they have been wearing respirators

1 in those areas?

2 A. They should have been, yes.

3 Q. Do you know whether people were also required
4 to clean up any loose fiber like that? Was that part of the
5 job responsibilities of people working in the area?

6 A. Yes, that's correct.

7 Q. We talked a little bit about misters and air
8 monitoring. Let me ask you, when you were -- you said at
9 some point you wore a personal monitor to determine the
10 levels of asbestos that were in your area, do you recall
11 that?

12 A. Yes, I do.

13 Q. When you were performing those job tasks and
14 being monitored, were you doing your job in the same
15 conditions that you normally would be?

16 A. When -- when you were wearing the monitors you
17 went about your job just like every other day.

18 Q. And were the misters always on when those
19 personal monitors were taken?

20 A. No.

21 Q. And did you ever -- did you ever comment to
22 anybody at -- during any of the OSHA inspections that the
23 misters were on then and they weren't on at other times?
24 Did you ever tell that to any inspector?

25 A. We were told we were not to volunteer any

1 information unless we were asked.

2 Q. Who told you that?

3 A. Our foremen.

4 Q. Do you recall anybody's name?

5 A. Mr. Groggen.

6 Q. Were you ever asked by anybody at OSHA about
7 working conditions at King City?

8 A. Yes, we were at one time or another, I'm sure
9 we were.

10 Q. Did you volunteer your opinions or were you
11 honest with them?

12 A. I guess I was.

13 Q. You recall whether you told them anything
14 about these misters?

15 A. They never asked.

16 Q. Talked a little bit about the tailing piles.
17 Are you aware whether or not there was wetting done of those
18 tailing piles?

19 A. The product -- the tailings themselves were
20 wet when they fell off, because of the process that they
21 went through. So the tailings themselves were already wet.

22 Q. And I know you indicated that there was dust
23 in many areas of the facility. When you were working there,
24 did you think there was any way to eliminate all of the dust
25 in the facility?

1 A. No, it just -- it just wasn't feasible to do
2 that.

3 Q. This was the place where they were milling
4 asbestos; is that right?

5 A. That's correct.

6 Q. Did you get the impression that people were
7 trying to reduce the amount of dust to which you were
8 exposed?

9 A. They made an effort.

10 MR. DUBIN: I have no further questions.

11 MR. HAINES: Just a couple of follow ups.

12

13 EXAMINATION BY MR. HAINES

14 MR. HAINES: Q. Was the house that you worked in
15 in Greenfield, was that at 122 11th Street, does that sound
16 right?

17 A. I couldn't quote you the address. All I know
18 is maybe four houses in from the intersection of Oak and
19 11th.

20 Q. Okay. And the other one, was that on -- you
21 said that was in King City. Do you remember the street
22 address for that one? Was it on 2nd Street?

23 A. Yeah, I was going to say 3rd but I know it's
24 down that way. That's been lots and lots of years.

25 Q. Okay. Sir, have you done your best to try to

1 tell the truth today no matter who was asking the questions,
2 whether it was me or counsel for Union Carbide?

3 A. I have no reason to lie.

4 Q. And anything I ever told you or asked you
5 affected your testimony in any way today?

6 A. No one has done anything to influence my
7 testimony.

8 MR. HAINES: Thank you, sir. That's all the
9 questions I have for you.

10 MR. DUBIN: Thank you very much for your time
11 today, sir.

12 (Whereupon, the deposition concluded at
13 11:54 a.m.)

1 Pursuant to Section 2025(q)(1) of the Code of
2 Civil Procedure of the State of California, I hereby certify
3 that I have read my deposition, made those changes and
4 corrections I deem necessary, and approve the same as now
5 written.

6 Dated this _____ day of _____, 2003.

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11 _____
12 Under Penalty of Perjury
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1 STATE OF CALIFORNIA)
) ss.

2 COUNTY OF MONTEREY)

3

4 The witness in the foregoing deposition appeared
5 before me, JENNA OSBORN, Certified Shorthand Reporter No.
6 8681 for the State of California.

7 Said witness then and there at the time and place
8 previously stated testified under penalty of perjury given
9 on said day.

10 The testimony of the witness and all the questions
11 and remarks requested by counsel were taken by me in
12 shorthand at the time and place therein named and
13 thereafter, under my direction, transcribed into
14 longhand.

15 I further certify that I am not of counsel or
16 attorney for either or any of the parties to said
17 deposition, nor in any way interested in the outcome of the
18 cause named in said caption and that I am not related to
19 any party thereto.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 this day of , 2003.

22

23

24 CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA

25