

FILE NAME: National Lead (NATL)

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National Lead

National Safety Council (NSC) was established in 1912 in Chicago by big business to share information on occupational safety and health. National Lead was represented in the National Safety Council at least as early as 1921, when the firm's CP Tolman was on the Executive Committee of NSC. The company remained active in NSC in later years; e.g., WH Comins represented the company in the Mining Section of NSC in 1931. NSC published many reports about dust hazards including asbestosis starting in 1929, including its monthly National Safety News, annual meetings (National Safety Congresses), and various other reports.

National Lead had the benefit of industrial hygiene surveys by Metropolitan Life Insurance Company. According to Met documents, the Titanium Alloy Manufacturing Company in Niagara Falls had a survey pending in 1950.

Titanium Alloy was also represented by RS Tabor at the founding meeting Jan. 15, 1935 of what became the Industrial Hygiene Foundation (IHF). National Lead was a member company of IHF (called Air Hygiene Foundation until 1941) as early as 1937, continuing through at least 1956. IHF had a staff of experts in industrial medicine and hygiene, did hundreds of confidential industrial hygiene surveys for corporations and trade associations by 1953, and starting 1937 published the Industrial Hygiene Digest as a service to member companies. This monthly publication included numerous abstracts, or summaries of recently published articles, articles published in several hundred scientific journals. Between 1937 and 1952, there were many abstracts on the lethality of asbestos published in the Digest, delivered monthly to member companies. These included the editorial in the Journal of the American Medical Association in 1949 on asbestosis and cancer of the lung.

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*1950, 1952 exposure to Syntko Patching & Texturing
Dutch Boy company owned by National Lead*

1 43. With asbestos, as with many other substances, it was infrequent that the TLV or the
2 basis for them were reviewed in the light of recent literature once the substance was on the list.
3 The limited efforts of unpaid volunteers working on the TLV committees appear to have been
4 mainly devoted to adding new substances to the list during the 1950s and thereafter.

5 **F. End-Product Users**

6 44. There were many articles coming out in the 1940s and 1950s that noted the risk of
7 asbestosis and in some cases cancer in individuals who were exposed to asbestos in the course
8 of using asbestos-containing products; there were more than 50 separate case reports, some
9 involving one or two individuals, some involving as many as ten or more. These case reports
10 were published mostly in the English language in medical journals between 1932 and 1963.
11 These reports are tabulated in Chapter 5, Tables 2 and 3 in my book, Asbestos: Medical and
12 Legal Aspects.

13 45. Companies marketing products that could give rise to respirable asbestos dust either
14 were or should have been aware that most dusts can either cause or aggravate problems in the
15 lungs of end-product users. Some specific company knowledge includes the following.
16 Westinghouse's medical director wrote a book in 1947 in which he state that asbestos produced
17 serious effects, including the progressive disease of asbestosis, yet the company did virtually
18 nothing to warn users of its products until required to do so by federal regulations. Mine Safety
19 Appliances Company published several pamphlets outlining the problems associated with dusts
20 and recommending the usage of respirators, yet did not put warnings on its asbestos clothing. In
21 1964 Eagle-Picher told GREFCO and NARCO that it was putting warning labels on the
22 asbestos products it manufactured for them, but neither company put warnings on its own
23 manufactured asbestos products. These are but a few examples of widespread failure to warn
24 workers concerning the hazards associated with asbestos and other dusts.

25 **Industry Knowledge and NL's Actual or Constructive Knowledge**

26 46. I have reviewed the deposition testimony of plaintiff William Rogers Jr., in which he
27 describes his work in 1950 and 1952 with Synko patching and texturing products, sold by the
28

1 Dutch Boy division of NL Industries, formerly known as National Lead Company. I also
2 reviewed Interrogatory 31 and Response to Interrogatory 31, of Synkoloid Company's
3 Amended Answers to Plaintiffs' Standard General Order 129 Interrogatories, *In re Complex*
4 *Asbestos Litigation*, San Francisco Superior Court Case No. 828684, verified by John Conroy
5 on November 9, 1998, which identifies Synko texturing and patching compounds as asbestos-
6 containing.

7 47. National Safety Council (NSC) was established in 1912 in Chicago by big business
8 to share information on occupational safety and health. National Lead was represented in the
9 National Safety Council at least as early as 1921, when the firm's CP Tolman was on the
10 Executive Committee of NSC. See **Exhibit 2**. The company remained active in NSC in later
11 years; e.g., WH Comins represented the company in the Mining Section of NSC in 1931 and
12 1932. See **Exhibit 3**. NSC published many reports about dust hazards including asbestosis
13 starting in 1929, including its monthly National Safety News, annual meetings (National Safety
14 Congresses), and various other reports.

15 48. National Lead had the benefit of industrial hygiene surveys by Metropolitan Life
16 Insurance Company. According to Met documents, the Titanium Alloy Manufacturing Division
17 in Niagara Falls had a survey pending in 1950. See **Exhibit 4**.

18 49. Titanium Alloy was also represented by RS Tabor at the founding meeting Jan. 15,
19 1935 of what became the Industrial Hygiene Foundation (IHF). The main purpose of this
20 meeting was to develop an industry response to the deluge of compensation claims around the
21 country for disability and death from silicosis and asbestosis. National Lead was a member
22 company of IHF (called Air Hygiene Foundation until 1941) as early as 1937, continuing
23 through at least 1956. See, e.g., **Exhibit 5**. IHF had a staff of experts in industrial medicine
24 and hygiene, did hundreds of confidential industrial hygiene surveys for corporations and trade
25 associations by 1953, and starting 1937 published the Industrial Hygiene Digest as a service to
26 member companies. This monthly publication included numerous abstracts, or summaries of
27 recently published articles, articles published in several hundred scientific journals. Between
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1 1937 and 1952, there were many abstracts on the lethality of asbestos published in the Digest,
2 delivered monthly to member companies. These included the editorial in the Journal of the
3 American Medical Association in 1949 on asbestosis and cancer of the lung.

4 50. Thus, ample information about the potential for asbestos to cause diseases, including
5 cancers, was available to members of industry in the late 1930s and throughout the 1940s and
6 1950s —particularly sizable companies like National Lead, who were members and officers of
7 NSC and IHF. In light of the accessibility of this information, as well as the information that
8 emerged during that time about the various occupations that were at risk for developing
9 asbestos-related diseases, it is my opinion that NL Industries either knew or should have known,
10 by the time Mr. Rogers worked with asbestos-containing texturing and patching products
11 purchased from NL's Dutch Boy division, that the asbestos in their products had the potential to
12 cause grave harm to persons such as Mr. Rogers, who were exposed to dust generated by the
13 handling of such products. By the early 1950s it was recognized in the medical and scientific
14 literature that individuals could contract asbestos-related diseases as a result of relatively low
15 exposures to asbestos dust.

16 I declare under the penalty of perjury under the laws of the State of California and of the
17 United States that the foregoing is true and correct.

18 Executed this ____ day of November 2019, at Garrett Park, Maryland.

21 _____
Barry I. Castleman, ScD