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STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF KERSHAW)

STATE OF SOUTH CAROLINE, COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

KERSHAW COUNTY BOARD OF EDUCATION,)
)
Plaintiff,)
)
vs.) No. 85-CP-28-58
)
W.R. GRACE AND CO., et al.,)
)
Defendants.)

The deposition of SUZANNE KAY TORREY,
taken in the above-entitled cause, before SUSAN M.
MARTINO, a Notary Public within and for the County
of Cook, State of Illinois, and a Certified
Shorthand Reporter of said state at 101 South Wacker
Drive, Chicago, Illinois, on the 29th day of July,
A.D., 1986, at 9:30 a.m.

RECEIVED
AUG 12 1986
DANIEL A. SPEIGHTS

1 PRESENT:

2 MR. DANIEL A. SPEIGHTS,
3 (304 Lee Avenue,
4 Hampton, South Carolina 29924),

5 - and -

6 HUMPHREY, FARRINGTON, PRINS & McCLAIN,
7 (123 West Kansas,
8 Independence, Missouri 64050), by:
9 MR. KENNETH B. McCLAIN,

10 appeared on behalf of the Plaintiff;

11 MORGAN, LEWIS & BOCKIUS,
12 (2000 One Logan Square,
13 Philadelphia, Pennsylvania 19103), by:
14 MR. E. BARCLAY CALE, JR.,

15 - and -

16 TURNER, FADGET, GRAHAM & LANEY,
17 (1801 Main Street,
18 Columbia, South Carolina 29202), by:
19 MR. EDWIN P. MARTIN,

20 appeared on behalf of United States
21 Gypsum Company.

22 REPORTED BY: SUSAN M. MARTINO, C.S.R.
23
24

I N D E X

WITNESS

EXAMINATION

SUZANNE KAY TORREY

By Mr. Speights

4

E X H I B I T S

Plaintiff's Deposition Exhibit

No. 1

12

No. 2

22

No. 3

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No. 4

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No. 5

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No. 6

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No. 7

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No. 8

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No. 9

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No. 10

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No. 11

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No. 12

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No. 13

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No. 14

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No. 15

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Nos. 16 and 17

82

Nos. 18, 19 and 20

83



Wolfe, Rosenberg and Associates, Inc.

Chicago, Illinois • (312) 782-8087

1 (WHEREUPON, the witness was duly
2 sworn.)

3 MR. SPEIGHTS: This deposition is taken
4 pursuant to notice and orders from the bench by the
5 Honorable John Hamilton Smith on July 2, 1986 and
6 July 22, 1986 which rulings are going to be
7 memorialized in a written order probably to be filed
8 this week. The deposition will be conducted in
9 accordance with the applicable rules of civil
10 procedure.

11 SUZANNE KAY TORREY,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 EXAMINATION

15 BY MR. SPEIGHTS:

16 Q. Would you state your full name, please?

17 A. Suzanne Kay, K-a-y, Torrey.

18 Q. What is your present address, Ms. Torrey?

19 A. 911 Cran, C-r-a-n, Evanston, Illinois.

20 Q. What is your business address?

21 A. 101 South Wacker Drive, Chicago, Illinois.

22 Q. I believe that's the corporate
23 headquarters of USG Corporation and U.S. Gypsum
24 Company, is that correct?

1 A. It's the corporate headquarters of USG
2 Corporation. I'm not sure it's accurate any more to
3 say it's the headquarters of United States Gypsum
4 Company.

5 Q. My understanding, Ms. Torrey, is that you
6 are a lawyer, is that correct?

7 A. Yes, sir.

8 Q. And from 1977 until the end of 1984, you
9 were a lawyer at the U.S. Gypsum Company?

10 A. Correct.

11 Q. From 1985 until present, you have been a
12 lawyer with USG Corporation?

13 A. That's correct.

14 Q. USG Corporation is the parent company of
15 U.S. Gypsum Company?

16 A. Yes.

17 Q. During this period of time, from 1977
18 until the present, you have not been engaged in
19 private practice, is that correct?

20 A. That's correct.

21 Q. You are or have been a salaried employee
22 of the company or the two companies?

23 A. Yes.

24 Q. I want to specifically address the period

1 1977 until the end of 1984 when you were a lawyer
2 with U.S. Gypsum Company.

3 What was your title or what were your
4 titles during that period of time?

5 A. During that period of time, I held the
6 title of attorney, senior litigation attorney and
7 senior attorney-litigation.

8 Q. Who did you report to in those positions?

9 A. Thad Snell, general counsel. He held
10 various titles also during that period.

11 Q. Did Mr. Snell later become vice president
12 of the company?

13 A. I believe he was vice president throughout
14 that entire time.

15 Q. Was Mr. Snell the senior attorney employed
16 by U.S. Gypsum Company throughout that period of
17 time?

18 A. Yes.

19 Q. During that period of time, again, '77
20 until the end of 1984, did you have any involvement
21 with asbestos litigation?

22 A. Yes.

23 Q. Would you describe to me generally what
24 your involvement was.

1 A. When I started with the company in 1977,
2 there were about 12 related cases in Knoxville
3 called the Knoxville cases.

4 I was brought into the company to work
5 with litigation filed against or on behalf of the
6 company, and these 12 cases were assigned to me at
7 that time.

8 That number grew progressively over the
9 years and I ended up with involvement generally,
10 first exclusively in the personal injury area, later
11 exclusively or primarily in the property damage
12 asbestos litigation.

13 Q. The 12 cases filed in Knoxville were
14 personal injury cases?

15 A. Yes.

16 Q. Those would be cases in which somebody
17 claimed to have an asbestos disease as a result of
18 exposure to some U.S. Gypsum product or products?

19 A. Yes.

20 Q. When did the change take place where your
21 involvement, primary involvement went from
22 personal injury litigation to asbestos property
23 damage cases?

24 A. The shift was in the fall of 1981. From

1 the period June of 1980 until the fall of 1981, I
2 was generally involved with both. But I was out on
3 maternity leave during the summer of 1981, and upon
4 my return a number of events coalesced and caused me
5 to spend the bulk of my time in the property damage
6 area.

7 Q. By property damage cases, are we referring
8 to cases filed by building owners such as school
9 districts against U.S. Gypsum Company seeking costs
10 associated with removal of asbestos-containing
11 products?

12 A. That's an accurate characterization,
13 although at the time, all of the cases were brought
14 on behalf of school districts.

15 Q. Initially they were brought by school
16 districts and later some nonschool districts brought
17 similar cases?

18 A. That's my understanding. That would have
19 occurred, I believe, after I no longer had
20 responsibility for the cases.

21 Q. And when did that occur?

22 A. In August of 1984.

23 Q. Now, in connection with your duties
24 regarding asbestos litigation, both personal injury

1 and property damage, did you report to Mr. Snell?

2 A. Yes.

3 Q. He was your boss?

4 A. Yes.

5 Q. Would it be fair to say that you met
6 regularly with him concerning the asbestos cases,
7 often many times a day?

8 A. I met with him as frequently as I felt the
9 situation required and sometimes it was daily or
10 several times during the day. Sometimes there would
11 be weeks in between.

12 Q. Are you familiar with a publication known
13 as the Asbestos Litigation Reporter?

14 A. Yes, I am.

15 Q. Can you describe generally what the
16 Asbestos Litigation Reporter is?

17 A. It is a publication that comes out every
18 two weeks that purports to report on events
19 occurring in either the personal injury, the
20 property damage or the asbestos insurance-related
21 litigation.

22 Q. Did you review the Asbestos Litigation
23 Reporter while you were involved with the personal
24 injury and property damage asbestos cases?

1 A. Yes.

2 Q. Did you have an occasion in the late 1970s
3 to review the Asbestos Litigation Reporter which
4 reported on what has been generally referred to as
5 the Sumner Simpson papers?

6 A. It was brought to my attention. We were
7 not a subscriber at that time.

8 Q. And did you at the time it was brought to
9 your attention review the publication where it
10 reported on the Sumner Simpson papers being located?

11 A. If you're asking me did I read the pieces
12 of paper that talked about that that were in the
13 Asbestos Litigation Reporter, yes, I did.

14 Q. Now, my understanding is that Sumner
15 Simpson was the president of Raybestos Manhattan.
16 back in the 1930s. Is that also your understanding
17 as well?

18 A. Yes?

19 Q. And the Sumner papers included both
20 documents allegedly created by him and documents
21 allegedly created by one Vandiver Brown of Johns
22 Manville, is that correct?

23 A. Yes.

24 Q. Now, included in that list -- strike that.

1 Did you have an opportunity at that time to review a
2 memorandum of agreement dated November 20, 1936
3 printed in the Asbestos Litigation Reporter?

4 A. Yes.

5 Q. I show you a copy of this document and ask
6 if that is a copy of the memorandum of agreement
7 that you reviewed in the late 1970s in the Asbestos
8 Litigation Reporter?

9 A. I'm sorry, I started reading. What was
10 the question?

11 MR. SPEIGHTS: Read it back, please.

12 (WHEREUPON, the record was read
13 by the reporter as requested.)

14 MR. CALE: Is the question whether the text is
15 the same or whether this is actually the copy as it
16 appeared in the Litigation Reporter?

17 MR. SPEIGHTS: My understanding is nothing
18 appears exactly as is in the Asbestos Litigation
19 Reporter because they have smaller print and they --
20 but is this the text?

21 BY THE WITNESS:

22 A. This is the text, and I believe the
23 notations that are on these pieces of paper would
24 not have appeared.



1 BY MR. SPEIGHTS:

2 Q. And which notations are you referring to?

3 A. There is a number in the upper righthand
4 corner 2-14, in the lower righthand corner, there
5 are various initials and numbers and the pages seem
6 to be identified as A, B and C. Each of the pages
7 bears what appears to be a Bates number stamp.

8 Q. Except for that, the text of this would be
9 identical to what you read in the Asbestos
10 Litigation Reporter?

11 A. It conforms to my recollection, yes.

12 MR. SPEIGHTS: I would ask this document
13 previously marked as Plaintiff's Exhibit 214 be
14 marked as an exhibit to this deposition as
15 Plaintiff's Exhibit 1.

16 (WHEREUPON, said document was marked
17 Plaintiff's Deposition Exhibit No. 1,
18 for identification, as of 7-29-86.)

19 (WHEREUPON, discussion was had
20 off the record.)

21 MR. CALE: Let the record reflect that the
22 document that has now been marked as Plaintiff's
23 Exhibit No. 1 is not a copy of the memorandum of
24 agreement as it appeared in the Asbestos Litigation



1 Reporter but, rather, a document obtained at some
2 other place at some other time.

3 But we agree that the text of Exhibit 1
4 conforms to the text of the memorandum of agreement
5 as it appeared in the litigation reporter. Is that
6 correct?

7 MR. SPEIGHTS: That's correct. And to avoid
8 any confusion, I will later forward counsel a copy
9 of the one that actually appeared in the Asbestos
10 Litigation Reporter, and we can discuss perhaps a
11 substitution of that copy for this copy.

12 MR. CALE: That would be perfectly agreeable.
13 BY MR. SPEIGHTS:

14 Q. Ms. Torrey, would you agree with me that
15 the memorandum of agreement reflects that it was
16 executed on behalf of United States Gypsum Company
17 by a Mr. Shaver, secretary-treasurer?

18 A. That's what appears to be on that piece of
19 paper, yes.

20 Q. Would you agree with me that the agreement
21 reflects that those people who signed the agreement
22 agreed to fund certain animal experiments with
23 asbestos dust to be performed by Dr. LeRoy Gardner
24 at Saranac Lake Laboratory in New York?



1 MR. CALE: I'm going to object to that question
2 only insofar as it is not all-inclusive. Obviously,
3 the memorandum of agreement first of all says that
4 it is pursuant to a meeting of brake lining
5 manufacturers of which U.S. Gypsum was never a brake
6 lining manufacturer.

7 It says that it is to be a three-year
8 study and a lot of other things which obviously we
9 think are material and important, and I object to a
10 question that only focuses on a few of the
11 attributes that perhaps are obviously of interest to
12 you.

13 If we can, perhaps let the document speak
14 for itself or in some other way try to get at what
15 you would like to have the witness testify to. But
16 I would not want to have an incorrect or incomplete
17 characterization of the document in a deposition
18 form where you would simply ask her to agree to it
19 unless you then want me on crossing into the other
20 aspects of it. I would be willing to work that any
21 way you think is reasonable.

22 MR. SPEIGHTS: I will be glad to rephrase the
23 question but I think you may have to go back and
24 cross to try to clarify whatever points you need to



1 clarify.

2 BY MR. SPEIGHTS:

3 Q. Ms. Torrey, would you agree with me that
4 the memorandum of agreement, among other things,
5 provides that the sponsors will fund certain animal
6 experiments with asbestos dust to be performed by
7 Dr. LeRoy Gardner of Saranac Lake, New York?

8 A. The document on its face says "The
9 undersigned hereby agree to underwrite certain
10 experiments with asbestos dust to be conducted by
11 Dr. LeRoy U. Gardner at the Saranac Laboratories,
12 Saranac Lake, New York."

13 I don't see a reference to animal
14 experiments.

15 Q. Were there other references in the
16 Asbestos Litigation Reporter which reflected that
17 these were in fact animal studies to be performed by
18 Dr. Gardner?

19 A. At any time or at the same time? In the
20 Litigation Reporter?

21 Q. During the period in the late 1970s, did
22 the Asbestos Litigation Reporter actually publish
23 three progress reports conducted pursuant to this
24 agreement which reflected that they were in fact ,

1 animal experiments?

2 A. There was published in Asbestos Litigation
3 Reporter to my recollection three progress reports
4 all of animal experiment work with asbestos done at
5 Saranac Lake Laboratories by Dr. Gardner.

6 Whether those documents reflect in the
7 reporter that it was the result of the memorandum of
8 agreement, I simply don't recall one way or the
9 other. I don't recall the specific recording of the
10 three progress reports and whether or not they
11 referenced back to the memorandum of agreement.

12 Q. I understand. From your review of the
13 various progress reports and the other
14 correspondence produced in connection with the
15 Sumner Simpson papers and from your review of
16 various U.S. Gypsum Company documents and/or
17 documents of the law firm which represented U.S.
18 Gypsum over the years, would you agree with me that
19 this agreement funded experiments with animal --
20 experiments with asbestos dust and animals? Do we
21 have any dispute about that, Ms. Torrey?

22 A. I'm having trouble with the way you're
23 wording the question.

24 Q. Let me try it again.

1 A. Thank you.

2 Q. I'm asking you now, in 1986, would you
3 agree with me from your review of various documents
4 since you first saw the memorandum of agreement,
5 that the memorandum of agreement did in fact fund
6 experiments with asbestos dust on animals?

7 MR. CALE: Let's go off the record for a moment.

8 (WHEREUPON, discussion was had
9 off the record between the witness
10 and Mr. Cale, out of the
11 hearing of other counsel and the
12 court reporter.)

13 MR. SPEIGHTS: Let me rephrase the question.

14 MR. CALE: Why don't you do that.

15 BY MR. SPEIGHTS:

16 Q. Ms. Torrey, would you agree with me that
17 the experiments with asbestos dust to be conducted
18 by Dr. Garner referred to in Plaintiff's Exhibit 1,
19 the memorandum of agreement, included animal
20 experiments?

21 A. Yes, as I now know today.

22 Q. As you now know today?

23 A. Yes.

24 Q. Now, upon reviewing the memorandum of

1 agreement, did you discuss it with Mr. Snell?

2 A. I brought it to his attention sometime
3 after it was brought to my attention.

4 Q. Was Mr. Shaver in fact secretary-treasurer
5 of U.S. Gypsum Company back during that period of
6 time?

7 A. That's my understanding, yes.

8 Q. And was Mr. Shaver later either Chairman
9 of the Board or President of U.S. Gypsum Company?

10 A. Yes.

11 Q. And at that time, did Mr. Shaver still
12 maintain an office at the corporate headquarters at
13 101 South Wacker, albeit he was retired?

14 A. I'm sorry, at what time?

15 Q. At the time that you first saw the
16 memorandum of agreement and the time you discussed
17 it with Mr. Snell.

18 A. And the question is did he maintain an
19 office --

20 Q. Did Mr. Shaver still maintain an office at
21 101 South Wacker at that time?

22 A. I believe he had the use of an office here.
23 Whether that's maintaining an office, I'm not sure.

24 Q. Would it be a fair statement to say that

1 the memorandum of agreement that you read in the
2 Asbestos Litigation Reporter and shared with Mr.
3 Snell was of interest to you and Mr. Snell?

4 MR. CALE: I think you can go ahead and answer
5 that one.

6 BY THE WITNESS:

7 A. Yes.

8 BY MR. SPEIGHTS:

9 Q. Was any attempt made to interview Mr.
10 Shaver to determine whether that was his signature
11 on the memorandum of agreement?

12 MR. CALE: I'm going to object to that question
13 so we have a record here to the extent that any
14 knowledge that the witness has is based on hearsay
15 or the activities of other people.

16 BY MR. SPEIGHTS:

17 Q. Did you subsequently have a conversation
18 with Mr. Snell, vice president of U.S. Gypsum
19 Company, concerning an interview he had with Mr.
20 Shaver?

21 A. Yes.

22 Q. Did Mr. Snell advise you that Mr. Shaver
23 stated that the signature on the memorandum of
24 agreement appeared to be his?



1 A. Yes.

2 Q. Did that interview occur during that
3 general period of time 1979 to 1980?

4 A. Yes. I was also informed Mr. Shaver had
5 no recollection of the contents of the memorandum of
6 agreement or of the study it purported to fund

7 Q. Did you also become aware that Dr. Gardner
8 prepared a monograph on his study in the year 1943?

9 A. I'm sorry, what's the question?

10 Q. Did you become aware that Dr. Gardner
11 published a monograph concerning his experiments,
12 animal experiments with asbestos dust in 1943?

13 A. No.

14 Q. Have you ever seen a copy of Dr. Gardner's
15 1943 monograph?

16 A. No.

17 Q. Has anyone advised you that Dr. Gardner
18 found in his animal experiments that certain animals
19 subject to the experiments with asbestos dust were
20 dying of lung cancer?

21 A. No.

22 Q. And that is true even today?

23 A. That's correct.

24 Q. Did you attend the Lexington trial in

1 April of 1984?

2 A. Yes.

3 Q. Ms. Torrey, shortly after you read the
4 memorandum of agreement in the Asbestos Litigation
5 Reporter, my understanding is that Donna Woodruff, a
6 paralegal working for you, located some documents at
7 101 South Wacker, is that correct?

8 A. Yes.

9 Q. Do you recall when that was that she
10 located these documents?

11 A. She was working on a project for me to
12 gather some old releases unrelated to asbestos just
13 for general product liability questions, and in
14 January of 1980 came upon some boxes.

15 Q. Where were those documents or those boxes
16 found?

17 A. She informed me that she found them in a
18 room located adjacent to the file room.

19 Q. And, again, that would have been at the
20 corporate headquarters at 101 South Wacker?

21 A. That's correct.

22 Q. And at that time, was your office located
23 at 101 South Wacker?

24 A. Yes.



1 Q. And was Mr. Snell's office located at 101
2 South Wacker?

3 A. Yes.

4 Q. Did Ms. Woodruff bring you any documents
5 from the box or boxes she located?

6 A. Yes.

7 Q. Did you ever go down to the storage room
8 and review the boxes themselves in the storage room?

9 A. No.

10 Q. Now, I understand that Ms. Woodruff
11 brought you at least three documents, would you
12 agree with that?

13 A. Yes, in the manila folders in which she
14 found them.

15 Q. I show you a copy of what previously has
16 been marked Plaintiff's Exhibit 20 and on another
17 copy Plaintiff's Exhibit 1694 and ask if that is one
18 of the documents which she brought to you?

19 A. It conforms to my recollection.

20 MR. SPEIGHTS: I would ask that be marked as
21 Plaintiff's Exhibit 2.

22 (WHEREUPON, said document was marked
23 Plaintiff's Deposition Exhibit No. 2,
24 for identification, as of 7-29-86..)

1 BY MR. SPEIGHTS:

2 Q. Ms. Torrey, Plaintiff's Exhibit 2 is a
3 letter from Vandiver Brown to J.S. Offut, and across
4 the top it reflects Johns-Manville Corporation with
5 the New York address.

6 Is this the Vandiver Brown or at least the
7 same name Vandiver Brown that we referred to earlier
8 as being general attorney for Johns-Manville
9 Corporation?

10 MR. CALE: Before the witness answers, I have
11 to object to your characterization of what this
12 document is.

13 As the document shows, it is a copy
14 obviously typed on someone's typewriter, not on the
15 letterhead stationery of Johns-Manville Corporation,
16 and it appears at least to me to be some typist's
17 rendition made with a typewriter of some document
18 that we do not have.

19 If you will agree with that
20 characterization as opposed to the one that I think
21 you gave which is this is a copy of a letter which
22 suggests that it's on original stationery, I think
23 she can answer the question or have it speak for
24 itself.

1 MR. SPEIGHTS: I'll choose none of those three.
2 alternatives.

3 BY MR. SPEIGHTS:

4 Q. Ms. Torrey, what is that document,
5 Plaintiff's Exhibit 2?

6 A. I'm not sure how it is you want me to
7 answer that. What do you mean what is it?

8 Q. Would you describe what that document is,
9 please?

10 A. This document to me appears to be a typed
11 rendition, to use Mr. Cale's word, of a letter. It
12 is not the original. It has instead of letterhead
13 the name Johns-Marville typed on it.

14 It bears the word "Copy" on the top which
15 it's my understanding was a commonly used method of
16 making a copy of a document before there were
17 photocopy machines available.

18 It is from an individual whose name
19 appears to be Vandiver Brown identified as general
20 attorney. It is addressed to J.S. Offut, assistant
21 to the president, United States Gypsum Company with
22 an address, re Dr. Gardner- asbestos dust experiment,
23 and it reads, "Replying further to yours of April 29,
24 1937, I am enclosing herewith copy of Dr. Gardner's

1 first progress report dated May 5, 1937."

2 I can only state to you what it says on
3 the letter.

4 Q. Thank you. Now, I next show you this
5 document and ask if this is also one of the
6 documents which you were shown by Ms. Woodruff in
7 early '80?

8 A. It appears to be the same document. I
9 haven't compared it word for word. I would point
10 out these are photocopies. The one I had was a
11 tissue copy.

12 That document also bears the word "Copy"
13 on the top and, again, I would assume someone has
14 retyped that from something else.

15 MR. SPEIGHTS: I would ask that that document
16 be marked as Plaintiff's Exhibit 3.

17 (WHEREUPON, said document was marked
18 Plaintiff's Deposition Exhibit No. 3,
19 for identification, as of 7-29-86.)

20 BY MR. SPEIGHTS:

21 Q. What is the title of that document and the
22 date of it, please?

23 A. It states "First Progress Report on
24 Asbestosis Experiments at the Saranac Laboratory,"

1 May 5, 1937."

2 Q. Now, is it my understanding that the
3 copies which Ms. Woodruff showed you of Plaintiff's
4 Exhibit 2, the letter from Vandiver Brown to J.S.
5 Offutt and Plaintiff's Exhibit 3, the first progress
6 report, were tissue copies?

7 A. Correct.

8 Q. Next I'm going to show you a document
9 which has been previously marked as 1693 and ask if
10 you can identify -- I'm not asking for a description
11 yet, but just if you recognize that document?

12 A. I have seen this document.

13 MR. SPEIGHTS: I'm going to ask that be marked
14 as Plaintiff's Exhibit 4, letter from J.S. Offutt to
15 G.G. King dated May 5, 1937.

16 (WHEREUPON, said document was marked
17 Plaintiff's Deposition Exhibit No. 4,
18 for identification, as of 7-29-86.)

19 BY MR. SPEIGHTS:

20 Q. You are aware, Ms. Torrey, that Mr. Smith
21 has testified that this document was also located by
22 Ms. Woodruff in 1980?

23 A. I haven't read Mr. Smith's deposition in
24 some time. I don't know if that's what he testified



1 to or not.

2 Q. As I understand your recollection, you
3 don't know whether this document was located in 1980
4 or 1984?

5 A. That's correct.

6 Q. Okay. Would you describe this document to
7 me, please?

8 A. It is a letter from J.S. Offutt identified
9 as assistant to the president, addressed to Mr. G.D.
10 King, research manager, B.M.R. Laboratories, Chicago,
11 attention Mr. C.C. Scheutz.

12 Do you want me to read the body of the
13 letter?

14 Q. If you would.

15 A. "The Saranac Laboratory of Saranac, New
16 York is making a three-year study of asbestosis.
17 They are investigating in particular the effect on
18 guinea pigs of breathing asbestos dust.

19 We understand that the dust being used is
20 composed of pure fibrous asbestos free from all
21 serpentine rock and other foreign particles, ground
22 as fine as possible and then ball milled. It is
23 supplied by Johns-Manville from their Canadian mines
24 in the Danville section of the province of Quebec.



1 In order that we can interpret results
2 obtained, we would appreciate your advising us if
3 the various types of asbestos we use would vary in
4 chemical composition or physical characteristics when
5 ground and ball milled from the Johns-Manville
6 asbestos being used in this investigation."

7 Q. And that letter, I believe, is on United
8 States Gypsum Company letterhead?

9 A. Yes. It also has the typed c.c.s on here,
10 and I seem to recall that other copies I have seen
11 had a check mark by the c.c., and there are file
12 notations on there inconsistent with United States
13 Gypsum Company filing systems.

14 Q. I next show you a document which has been
15 previously marked Plaintiff's Exhibit 1698 and ask
16 if that is one of the documents which Ms. Woodruff
17 showed you in early 1980?

18 A. Again, without reading it through word by
19 word, it is a report of dust survey at National
20 Asbestos Company plant of United States Gypsum Co.
21 at Jersey City, New Jersey, and I assume it is what
22 we have been referring to as the Jersey City study
23 and that was shown to me by Donna Woodruff in 1980.

24 MR. SPEIGHTS: I ask that be marked as



1 Plaintiff's Exhibit 5.

2 (WHEREUPON, said document was marked
3 Plaintiff's Deposition Exhibit No. 5,
4 for identification, as of 7-29-86.)

5 BY MR. SPEIGHTS:

6 Q. What is the date of the Jersey City study,
7 Ms. Torrey?

8 A. It states, made by the Saranac laboratory
9 May 25 through June 2, 1936. Received July 31, 1936.
10 I notice stapled to this are some other
11 materials that are not the Jersey City study.

12 MR. SPEIGHTS: Let's delete those.

13 MR. CALE: Sure.

14 MR. SPEIGHTS: Let's go off the record.

15 (WHEREUPON, discussion was had
16 off the record.)

17 BY MR. SPEIGHTS:

18 Q. Ms. Torrey, would you agree with me that
19 this study reflects a study by Dr. Gardner in 1936
20 of a plant formerly owned by National Asbestos
21 Company, the assets of which were purchased by
22 United States Gypsum Company?

23 A. Yes.

24 Q. Did Dr. Gardner find --

1 A. Excuse me. Some of the assets of which
2 were purchased. I don't know if it was all of the
3 assets.

4 Q. Did Dr. Gardner report in this study that
5 there were cases of asbestosis at this plant?

6 A. I haven't read that study in a long time.
7 If you want, I'm going to have to read it and find
8 it. If you want to point it out to me, I can agree
9 with you that that's what it says in there.

10 Q. Let me do it this way. I'm going to show
11 you another document previously marked as
12 Plaintiff's Exhibit 1697 and ask if you are familiar
13 with that document?

14 A. I have seen this document.

15 MR. SPEIGHTS: I'm going to ask that be marked
16 as Plaintiff's Exhibit No. 6.

17 (WHEREUPON, said document was marked
18 Plaintiff's Deposition Exhibit No. 6,
19 for identification, as of 7-29-86.)

20 BY MR. SPEIGHTS:

21 Q. I'm going to show you another document not
22 previously marked and ask if you are familiar with
23 that document?

24 A. I'm familiar generally with the contents

1 of the letter. Whether or not I have in fact seen
2 the letter before, I don't know.

3 MR. SPEIGHTS: I'm going to ask that that
4 letter be marked as Plaintiff's Exhibit 7.

5 (WHEREUPON, said document was marked
6 Plaintiff's Deposition Exhibit No. 7,
7 for identification, as of 7-29-86.)

8 BY MR. SPEIGHTS:

9 Q. Now, to review where we are on the Jersey
10 City report, Exhibit 5 is the Jersey City report
11 itself prepared by Dr. Gardner which was shown to
12 you by Ms. Woodruff in 1980?

13 A. Correct.

14 Q. Exhibit 6 is a letter from General Service
15 Manager, who I believe everyone agrees was Mr.
16 Parrish at that time, to W.L. Keady, of August 13,
17 1936 which summarizes that report?

18 A. It in part appears to summarize the report.

19 Q. And Plaintiff's Exhibit 7, a letter from
20 Mr. Parrish to the law firm of Scott MacLeish & Falk
21 dated August 17, 1936, forwards a copy of the
22 summary and report to that law firm?

23 A. In part, it forwards a copy of that, yes.

24 Q. And also comments on the report itself?



1 not possible from their findings to establish the
2 maximum safe concentration of asbestos dust in the
3 air."

4 Q. To review because I may have confused the
5 record, what you acknowledge that Ms. Woodruff
6 showed you in early 1980 was the letter from
7 Vandiver Brown to J.S. Offutt, the first progress
8 report on asbestosis experiments at the Saranac
9 laboratory and the Jersey City report, those three
10 documents having been marked as Plaintiff's Exhibits
11 2, 3 and 5?

12 A. That's correct.

13 Q. Now, when you reviewed the documents, did
14 you discuss them with Mr. Snell or shortly
15 thereafter?

16 A. I showed them to him. I don't know if we
17 discussed them as such.

18 Q. You don't know whether you discussed the
19 details with him but you certainly discussed the
20 fact that the documents had been located with him?

21 A. I would characterize it that I brought to
22 his attention that I had been shown these documents.

23 Q. And you showed him the documents?

24 A. That's correct.



1 A. I'm not sure if comments on the report is
2 an accurate characterization, but I won't argue with
3 it.

4 Q. Now, would you read for me the first two
5 paragraphs on the letter to Mr. Keady summarizing in
6 part the Jersey City report?

7 A. The first two paragraphs?

8 Q. Yes.

9 A. "We have a comprehensive report of dust
10 conditions in our Jersey City plant and a report on
11 the x-rays of the employees examined at that plant
12 by Dr. Gardner's organization.

13 In brief, the findings are:

- 14 1. Diagnosis of asbestosis for five
15 men.
- 16 2. Possibly five additional men have
17 asbestosis but necessary to
18 confirm by clinical correlation.
- 19 3. Serious asbestos dust hazard
20 under present operations."

21 Q. Now, I'm going to refer back to the report
22 itself which Ms. Woodruff showed you in 1980 and ask
23 you to read on page 4 the next to the last paragraph.

24 A. "The authors of the report conclude it is



1 Q. And that was sometime in early 1980?

2 A. Yes.

3 Q. I understand Mr. Snell made a decision
4 concerning these documents at that time, is that
5 correct?

6 A. Are you going to to ask me what the
7 decision is? Otherwise, I can't answer your
8 question exactly the way you've posed it.

9 Q. On that occasion in early 1980, did Mr.
10 Snell make a decision that these documents would not
11 be produced or revealed in response to discovery in
12 the asbestos cases?

13 A. Mr. Snell made a determination -- strike
14 that. Mr. Snell made a decision that United States
15 Gypsum Company would respond in discovery to the
16 extent of documents which were United States Gypsum
17 Company documents and, therefore, were deemed
18 verified or with respect to information learned from
19 current or former United States Gypsum Company
20 employees.

21 It was his opinion upon review of these
22 documents that none of these three documents were
23 United States Gypsum Company documents maintained in
24 the ordinary course of business by United States

1 Gypsum Company and, further, that in his opinion,
2 they were documents of the Keck law firm.

3 Since these were not United States Gypsum
4 Company documents, they were not responsive to
5 discovery requests in asbestos litigation.

6 I think to make the answer complete, I
7 should also point out that the question of verifying
8 was the critical issue and that an attempt was made
9 to verify the information contained in these
10 documents through United States Gypsum Company
11 sources, either through documents that were United
12 States Gypsum Company documents or through current
13 or former United States Gypsum Company employees.

14 And in that regard, we undertook a rather
15 extensive search for information from which to
16 verify the contents of these three documents.

17 Q. Ms. Torrey, because you are a lawyer, I
18 think you have moved to my second and third
19 questions, and my first question was simply was Mr.
20 Snell's bottom line decision that these documents,
21 absent something else, would not be produced in
22 response to discovery in the personal injury or
23 property damage litigation?

24 A. I can't characterize it that way. It was

1 his judgment that the documents responsive to
2 discovery would be United States Gypsum Company
3 documents, and it was his opinion that these did not
4 fall in that category. Therefore, they were not
5 produced.

6 Q. As a result of that meeting with Mr. Snell,
7 was it understood that these documents, Plaintiff's
8 Exhibits 2, 3 and 5, would not be produced in
9 response to discovery in the asbestos litigation
10 absent some other documentation?

11 A. What was the first part of that question?

12 MR. SPEIGHTS: Read it back, please.

13 (WHEREUPON, the record was read
14 by the reporter as requested.)

15 BY THE WITNESS:

16 A. I'm sorry. The only way I can state it,
17 Mr. Speights, is that to the extent anything was
18 understood at that time, what was understood was
19 that in Mr. Snell's judgment, the documents that
20 were required to be produced in the asbestos
21 litigation were United States Gypsum Company
22 documents or information acquired from current or
23 former United States Gypsum Company employees.

24 It was his opinion that these documents,

1 were not United States Gypsum Company documents.
2 Therefore, they were not produced absent other
3 verification.

4 BY MR. SPEIGHTS:

5 Q. And that's the case even though -- let's
6 take them in order. Exhibit 2 was a copy of a
7 letter from Mr. Brown of Johns-Manville to Mr.
8 Offutt, assistant to the president of U.S. Gypsum
9 Company; that is, the letter itself was not a letter
10 to or from any U.S. Gypsum attorney?

11 A. There is no U.S. Gypsum attorney on that
12 letter, that's correct.

13 Q. And the copy of the first progress report
14 of May 5, 1937, Exhibit 3, was an attachment to that
15 letter to Mr. Offutt of U.S. Gypsum Company?

16 A. Yes, and it bears the file notation of the
17 Keck firm.

18 Q. A handwritten note in the upper righthand
19 corner?

20 A. That's correct, and it came out of a file
21 that bore the same notation.

22 Q. And Exhibit 5, the Jersey City study,
23 bears no mention thereon of any U.S. Gypsum lawyer?

24 A. That's my recollection. I would have to

1 again, read it word for word to verify it, but
2 that's my recollection.

3 Q. And indeed, the other correspondence would
4 reflect that the law firm got its copy of this study
5 from U.S. Gypsum?

6 A. But I didn't have that correspondence at
7 the time in the 1980 time frame.

8 Q. I understand that. But we now know that
9 the copy of this study given to the law firm came
10 from U.S. Gypsum, correct?

11 A. That's what the correspondence would
12 appear to suggest.

13 Q. Ms. Torrey, was this Mr. Snell's decision
14 or your decision?

15 A. Mr. Snell's decision, to the extent that,
16 again, I have characterized it as a judgment and an
17 opinion.

18 Q. It was Mr. Snell's judgment and opinion?

19 A. Yes, sir.

20 Q. You would agree with me that these
21 documents reflect on their face that somebody in the
22 company had notice, somebody in the corporate
23 structure, had notice of the things contained in the
24 documents?

1 A. I would agree with that statement today.
2 I don't think I would have agreed with it in 1980.

3 Q. You would agree with me that if one of my
4 clients had documents in their files, they could not
5 legitimately protect them from discovery simply by
6 giving them to me as their attorney?

7 MR. CALE: I'm going to object to that question
8 and instruct her not to answer. I think that
9 clearly is calling for her judgment as an attorney
10 to either agree with you or disagree with you as an
11 attorney as to what you might or might not opine to
12 a client.

13 BY MR. SPEIGHTS:

14 Q. From the time you met with Mr. Snell in
15 early 1980 until the time you ceased working on
16 asbestos cases on August 20, '84, to your knowledge,
17 did U.S. Gypsum Company ever produce any one of
18 these three documents in any asbestos lawsuit,
19 either personal injury or property damage?

20 A. There was a word missing in your question.
21 I assume you mean produced to any plaintiff?

22 Q. Yes.

23 A. That's correct. I'm not aware that any of
24 those three documents were ever produced during that

1 time frame.

2 MR. CALE: Off the record.

3 (WHEREUPON, discussion was had
4 off the record.)

5 (WHEREUPON, a recess was had.)

6 BY MR. SPEIGHTS:

7 Q. Ms. Torrey, I understand one of the
8 justifications for not giving or providing copies of
9 those documents in discovery in 1980 was that you,
10 that is, the company wanted to conduct in your words
11 an extensive investigation to see what if any
12 confirming documents might exist?

13 A. That's correct.

14 Q. Now, as I understand the position of U.S.
15 Gypsum Company today, you believe that the documents,
16 these later documents I referred to, such as the
17 Parrish letter and the letter to Mr. Keady, were
18 actually part or contained in the boxes found by Ms.
19 Woodruff in 1980, is that correct?

20 A. You have been provided with some memoranda
21 that Donna Woodruff wrote me, the reasonable
22 inference from which is that these -- the three Keck
23 boxes were found by her in 1980. Does that answer
24 your question?

1 Q. Yes. And, of course, Plaintiff's Exhibit
2 7 -- excuse me, Plaintiff's Exhibit 6, a letter to
3 Mr. Keady summarizing the Jersey City report, and
4 Plaintiff's Exhibit 7, the letter from Mr. Parrish
5 forwarding the Keady letter on the Jersey City
6 report to the Keck firm were found in those boxes,
7 later found in those boxes?

8 A. Yes, but I was not aware of them being in
9 those boxes until 1984.

10 Q. I understand that. My question is, in
11 your extensive search or investigation, did you ever
12 go through the boxes which Ms. Woodruff found in
13 1980?

14 A. No, because I don't know what boxes -- at
15 that time, I did not know what boxes she had found
16 when we tried to go back through. I knew that she
17 had found one box, the so-called department 198
18 silicosis box, which was transferred to the legal
19 department at about the time she discovered it.

20 She discovered that box at the same time
21 that I now know she discovered the other three.
22 That box has been continuously maintained in the
23 legal department since approximately January, 1980.
24 That box bears the notation box 1 of 2.

1 When we tried to go back and find box 2 of
2 2, which I always assumed was the box out of which
3 these materials had come, we couldn't find box 2 of
4 2.

5 Q. Well, let's clarify that because I don't
6 want the record to be confused.

7 One box which Ms. Woodruff found which was
8 not a law firm box was taken to the legal department?

9 A. Correct.

10 Q. And you don't know whether these three
11 documents we have been referring to were from that
12 box or the other three boxes? You don't know
13 whether Plaintiff's Exhibits 5, 2 and 3 came from
14 that box or some other box or boxes?

15 A. During the period sometime in the summer
16 of 1980, which was after Donna Woodruff had left us,
17 through the period 1984, I had a recollection that
18 Donna had found two boxes, had one of them in the
19 department.

20 It bore a label that said box 1 of 2 from
21 which I could infer there was a second box. We
22 never could find that second box. It was not until
23 1984 that I knew of the existence of the three
24 so-called Keck boxes. It was not until recently,

1 when the three Woodruff memoranda were located that
2 I know or became aware of the fact that the three
3 boxes found in 1984 were the same three boxes
4 apparently -- were the same boxes that Donna had
5 found in 1980.

6 Q. I'm afraid we're getting ahead of
7 ourselves. I'm going to ask you about 1984 in
8 awhile. But I want to try to focus our attention on
9 1980.

10 In 1980, Ms. Woodruff located among other
11 things one box which was transferred to the legal
12 department?

13 A. That's correct.

14 Q. Okay. Additionally, Ms. Woodruff sent you
15 a memorandum in 1980 which reflected that she
16 located three boxes of documents, correct?

17 A. May I see which memorandum you're
18 referring to? This memorandum suggests she found
19 three boxes in 1980.

20 MR. SPEIGHTS: I am going to ask that be marked
21 as 6.

22 (WHEREUPON, said document was marked
23 Plaintiff's Deposition Exhibit No. 8,
24 for identification, as of 7-29-86.)



1 BY MR. SPEIGHTS:

2 Q. Now my question is, first, in your
3 extensive search to see whether there were
4 confirming documents, for whatever reason, you did
5 not nor do you know of anyone who went through the
6 three boxes referred to in Plaintiff's Exhibit 8
7 until 1984?

8 A. That's correct.

9 Q. In addition, in your extensive search for
10 several years, no one thoroughly went through the
11 box which Ms. Woodruff brought to the legal
12 department?

13 A. Yes.

14 Q. Yes, that's correct?

15 A. Yes, that's correct.

16 Q. Now, we are still in 1980. I think we
17 have gone through Ms. Woodruff's discovery. I
18 believe in 1980 also that the first lawsuit was
19 filed against U.S. Gypsum by building owners
20 regarding asbestos-containing materials in its
21 building, is that your recollection?

22 A. The Cinnaminson School District case was
23 filed in 1980.

24 Q. That was a New Jersey school district?

1 A. Correct.

2 Q. What was the product at issue in the New
3 Jersey case?

4 A. I have not read that complaint in many
5 years, but I seem to recall that the complaint
6 itself referenced Audicote.

7 Q. That was an acoustical plaster made by
8 United States Gypsum Company in previous years?

9 A. Correct.

10 Q. Was Audicote the most named product in the
11 lawsuits against USG, the property damage lawsuits
12 against USG during the period you were involved?

13 A. Oh, I can't state that because I never did
14 a count of the complaints of how many had the word
15 Audicote in them.

16 Q. Audicote was an acoustical plaster sold by
17 U.S. Gypsum sold from sometime in the '50s into
18 early 1970s?

19 A. Correct.

20 Q. And it was the subject of other lawsuits
21 besides the New Jersey lawsuit?

22 A. At some point in time, yes.

23 Q. Now, my understanding is that in
24 connection with that lawsuit in 1980, you went to,



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1 the research department and met with at least two
2 gentlemen concerning the product Audicote, is that
3 correct?

4 A. That's correct.

5 Q. And on that occasion, did you check out
6 the original laboratory files maintained at the
7 research department on Audicote?

8 A. At my request, I was given what I
9 understood to be the working files maintained by the
10 plasters laboratory relating to Audicote.

11 Q. How many files were there; what size was
12 the -- what quantity were given to you?

13 A. I recall that the paper was organized into
14 files for a size paper eight-and-a-half by eleven
15 and that the total volume of file folders would be
16 about three quarters of a file drawer.

17 Q. Would you agree with me that if you
18 stacked them on top of each other, they would be
19 about three feet in height?

20 A. That's correct.

21 Q. Now, these were hard copies, weren't they?

22 A. That's correct.

23 Q. And many of them were research reports
24 which were also on microfilm?



1 A. That's correct.

2 Q. But the hard copies also included
3 memoranda and handwritten notes which would not be
4 on microfilm, is that correct?

5 A. It is correct that I recall that there
6 would be memoranda and handwritten notes on those
7 files, and it is correct that those materials would
8 not be on microfilm.

9 Q. What did you do with the hard copies of
10 these files?

11 A. I brought them back to my office.

12 Q. And that still was 101 South Wacker?

13 A. That's correct.

14 Q. And for some period of time, you
15 maintained them in your individual office?

16 A. That's correct.

17 Q. Now, let me move to 1981. I believe
18 that's when you told me that your principal job
19 beginning in 1981 was coordinating U.S. Gypsum's
20 defense to asbestos property damage cases?

21 A. Yes, beginning in the fall of 1981 after
22 my return from maternity leave.

23 Q. And in that capacity, you continued to
24 report to Mr. Snell?

1 A. That's correct, except for there was a
2 period of time in 1984 when Mr. Leisten was
3 associate general counsel and at that time I
4 formally reported to him.

5 Q. The following year in 1982, my
6 understanding was you located some internal
7 operating bulletins, is that correct?

8 A. Yes.

9 Q. Can you tell us what an internal operating
10 bulletin is?

11 A. Well, let's back up. I knew about
12 operating bulletins probably in 1977 or 1978. I did
13 not learn of operating bulletins in 1982.

14 Q. What are operating bulletins?

15 A. Operating bulletins are of numerous types.
16 It's a generic term relating to bulletins which are
17 historically maintained by the company relating to
18 such things as production methods, plant safety,
19 plant operations, product formulations, marketing
20 information. I'm forgetting a category.

21 Q. In any event, they are internal documents
22 within U.S. Gypsum Company?

23 A. That's correct.

24 Q. And I show you a copy of a memorandum from



1 S.K. Torrey to T.S. Snell dated March 24, '82 and
2 ask if you recognize that document?

3 A. I have seen this document recently.

4 MR. SPEIGHTS: I would ask that be marked as
5 Plaintiff's Exhibit 9.

6 (WHEREUPON, said document was marked
7 Plaintiff's Deposition Exhibit No. 9,
8 for identification, as of 7-29-86.)

9 BY MR. SPEIGHTS:

10 Q. The document consists of three pages.
11 Would you agree with me that that document reflects
12 that in 1982, you reviewed, among others, operating
13 bulletins dated 1943, 1948 and 1954?

14 MR. CALE: Can we take a minute?

15 MR. SPEIGHTS: Sure.

16 (WHEREUPON, discussion was had
17 off the record between the witness
18 and Mr. Cale, out of the
19 hearing of other counsel and the
20 court reporter.)

21 MR. CALE: Okay.

22 BY THE WITNESS:

23 A. Can you read the question back, please?

24 (WHEREUPON, the record was read

by the reporter as requested.)

BY THE WITNESS:

A. Yes.

BY MR. SPEIGHTS:

Q. I show you a two-page operating bulletin dated August 24, 1943, No. 2-5 and ask you if that is the '43 bulletin referred to in that memorandum?

A. Yes.

MR. SPEIGHTS: I would ask that be marked as Plaintiff's Exhibit 10, consisting of two pages, operating bulletin.

(WHEREUPON, said document was marked Plaintiff's Deposition Exhibit No. 10, for identification, as of 7-29-86.)

BY MR. SPEIGHTS:

Q. In your memorandum to Mr. Snell I believe you quoted from the 1943 bulletin, is that correct?

A. Yes.

Q. Would you read that quote, please?

A. As revealed in the memorandum, it states, "It is recommended that before any applicant for employment is hired, the history of his previous employment be fully developed. If there is a questionable history of exposure to asbestos or



1 silica dust or an indicated partial lung disability.
2 such as tuberculosis, the applicant should not be
3 employed until satisfactorily passing a medical
4 examination. Such a medical examination shall
5 include the taking of chest x-rays and their
6 interpretation by Saranac Laboratories as set forth
7 in bulletin 4-5."

8 That concludes the quote from the bulletin.

9 Q. And then I believe -- I would request that
10 you read the last paragraph on page 2.

11 A. The last paragraph on page 2 states,
12 "I believe these documents are sufficient to impute
13 to the corporation some knowledge of the
14 relationship between exposure to asbestos and
15 development of some disease. Accordingly, I believe
16 we are going to have to disclose this in future
17 answers to interrogatories depending obviously on
18 the precise wording of the interrogatory."

19 Q. I'm now going to show you a document also
20 entitled, "Elimination of Dusty Conditions" dated
21 October 4, 1937 and ask you if you recognize that
22 document?

23 A. Do I recognize it?

24 Q. Yes. Have you seen it before?

1 A. I have no idea.

2 Q. You are familiar with operating bulletins --
3 that does reflect that it is an operating bulletin
4 of U.S. Gypsum Company, doesn't it?

5 A. Yes, it is.

6 Q. Is that a predecessor bulletin to
7 Plaintiff's Exhibit 10 which you just read from?

8 A. No, at least not based on the bulletin
9 number.

10 Q. I believe that --

11 A. And you said a predecessor? What's the
12 date on that one?

13 Q. 1937.

14 A. Well, the two bulletins have the same
15 title. My reason for saying that one is not a
16 predecessor of the other is based solely on the
17 bulletin number.

18 Q. Well, I believe you also note in your
19 memorandum that the previous operating bulletin,
20 that is, the immediately previous one, had not been
21 located.

22 A. No. No. We have not located 4-5. I
23 don't know that 4-5 is the predecessor to this one.
24 4-5 is referenced in the quoted paragraph.

1 Q. Is that 4-5?

2 A. No, that's 4-5-1.

3 Q. So that's not the same as the 4-5 referred
4 to in this?

5 A. I would have to go back through all of
6 them, but I am assuming that there is a 4-5 separate
7 from 4-5-1.

8 Q. Now, I also believe -- we are up to 1982,
9 Ms. Torrey. I also believe in 1982 that other
10 lawsuits were filed against U.S. Gypsum Company on
11 behalf of building owners.

12 A. I recall one, possibly two in 1982.

13 Q. And then in 1983, some other lawsuits were
14 filed on behalf of building owners?

15 A. Since -- continuously since 1982, there
16 have been suits filed.

17 Q. And among those cases filed in 1982 and
18 the first half of 1983 would have been Lexington,
19 South Carolina, Greenville, South Carolina,
20 Huntsville, Alabama and Spartanburg, South Carolina?

21 A. I recall specifically that Lexington was
22 served on United States Gypsum Company the day after
23 Manville filed bankruptcy which would put it, I
24 believe, at August 26, '82.



1 The other cases you mentioned were filed
2 sometime thereafter. Whether it was late '82 or
3 early '83, I would have to check the records.

4 Q. In any event, as a result of these cases,
5 U.S. Gypsum had to respond to various discovery
6 requests?

7 A. Yes.

8 Q. And those discovery requests included both
9 requests for U.S. Gypsum documents and written
10 interrogatories or questions to U.S. Gypsum Company
11 by the school districts?

12 A. Yes.

13 Q. You coordinated the responses to this
14 discovery?

15 A. That's correct.

16 Q. In response to this discovery, did you
17 reveal or produce any of the three exhibits which
18 you reviewed in 1980 that Ms. Woodruff presented to
19 you, that is, either the letter from Mr. Brown to
20 Mr. Offutt or the first progress report or Dr.
21 Gardner's study of the Jersey City plant?

22 A. I'm having trouble with your question
23 only because I believe you asked did I ever cause to
24 be produced any of these three. The answer to that

1 is no, I did not cause any of these three to be
2 produced.

3 If the question is have any of these three
4 ever been produced, I don't know the circumstances
5 of their being produced to you in Spartanburg
6 because I believe they were produced in response to
7 discovery. And Spartanburg would have been filed at
8 about the same time as your other cases.

9 Q. Let me rephrase the question.

10 In responses to discovery in 1983 in any
11 of these four cases, Lexington, Greenville,
12 Huntsville or Spartanburg, did you either produce or
13 refer to the three documents which Ms. Woodruff
14 presented to you in 1980, that is, the Brown to
15 Offutt letter, the first progress report or the New
16 Jersey study performed by Dr. Gardner?

17 A. If we refer specifically to any of these
18 three documents in any discovery filed in those
19 cases in 1983, the answer is no.

20 Q. Now, I do not want to review the entire
21 discovery of those three cases.

22 A. Thank you.

23 Q. But I would ask you to read
24 interrogatory 77 and the answer in the Greenville,



1 case and request No. 10 and the response in the
2 Greenville case.

3 A. Well, you are showing me something that is
4 not --

5 Q. I can show you the actual discovery if you
6 would like.

7 A. I'll read what's here and you have to
8 represent that that's what it is. I don't know what
9 it is, but I'll read it.

10 Q. No, I'll just get it out then. Ms. Torrey,
11 I show you the U.S. Gypsum Company's responses to
12 plaintiff's first set of interrogatories in the
13 Greenville case, dated or verified on June 28, 1983.
14 I ask you to read interrogatory 77 -- it's not
15 necessary to read the subparts -- and U.S. Gypsum
16 Company's response to that interrogatory.

17 A. Question 77 without the subpart
18 states, "Did you direct to be performed, sponsor,
19 finance or receive the results of any studies or
20 tests performed by the Saranac Lake Laboratory or the
21 Trudeau Foundation relating to asbestos exposure and
22 its effect on human life. If so, identify."

23 The response is, "None of which this
24 defendant is currently aware."



1 Q. In addition to that, I believe that
2 Greenville served requests to produce on U.S. Gypsum.
3 Do you recall that?

4 A. I don't specifically recall it. I'm sure
5 you did.

6 Q. Do you recognize this order of judge
7 Wilkins?

8 A. Yes.

9 Q. And I believe Judge Wilkins on page 3
10 quotes request No. 10 and the response, agreed?

11 A. That's what it appears to be, yes.

12 Q. Would you read the request to produce 10
13 and U.S. Gypsum Company's response?

14 A. It states, "Any and all other records,
15 correspondence, minutes or other documents of this
16 defendant including all subsidiaries, divisions and
17 predecessor entities wherein the potential health
18 effects of asbestos have been discussed."

19 Response, "Documents responsive to this
20 request have recently been found and will be
21 forwarded to plaintiff's attorney."

22 Q. Now, in response, my understanding is,
23 again, you did not produce the documents located by
24 Ms. Woodruff in 1980 because of the judgment Mr.



1 Snell made at that time?

2 A. Yes.

3 Q. Additionally, you did not produce the 1943
4 operating bulletin that we have now marked as
5 Plaintiff's Exhibit 10, is that correct?

6 A. I don't know.

7 Q. You do not know whether you produced the '43
8 bulletin or not?

9 A. In any discovery?

10 Q. No, in response to that request to produce
11 in 1983.

12 A. Oh, in '83. I don't believe so.

13 Q. Additionally, Ms. Torrey, in 1983,
14 sometime during the middle of that year, these three
15 documents, Exhibits 2, 3 and 5, found by Ms.
16 Woodruff in 1980, were transferred from U.S. Gypsum's
17 headquarters, is that correct?

18 A. Yes.

19 Q. My understanding is from 1980 when they
20 were discovered until sometime around June or July,
21 1983, they were located or maintained in the legal
22 department at U.S. Gypsum's headquarters at 101
23 South Wacker, Chicago?

24 A. That's correct, in the file folders in .

1 which they were given to me.

2 Q. Sometime during that period, you directed
3 another attorney in the U.S. Gypsum Company legal
4 department to carry them to the Keck firm which had
5 represented you over the years -- represented U.S.
6 Gypsum over the years?

7 A. Yes.

8 Q. Was any inventory made of what was
9 actually carried over there?

10 A. No.

11 Q. Was any cover letter prepared which
12 accompanied the documents or which followed up on
13 the transfer?

14 A. No.

15 Q. Was there any chain of custody document
16 executed when you transferred these to the Keck firm?

17 A. None of which I am aware.

18 Q. Was there any receipt slip executed over
19 at the Keck firm signing for the documents?

20 A. I don't know whether one was or not. I
21 have not seen one. I don't know if they have some
22 internal system that they may have maintained.

23 Q. It's also my understanding that those
24 documents remained over there throughout the time, --

1 throughout the balance of your time as the
2 coordinator of the property damage litigation, that
3 is, until August of 1984, is that correct?

4 A. I don't personally know what the Keck firm
5 did with the documents. I requested that they be
6 maintained as they would any of their other
7 historical client files. I had no reason to ask for
8 the documents or to request to see the documents or
9 have to have anything to do with the documents
10 during the remaining time I was involved the
11 asbestos litigation.

12 Q. You do recognize now, however, that the
13 actual copy of Exhibit 2, the letter from Vandiver
14 Brown to J.S. Offutt, and the letter from -- and the
15 first progress report attached to that letter have
16 not been located?

17 A. I have been told that the tissue copy I
18 recall sending -- that I recall I had which is the
19 one I sent back has not been located.

20 Q. Additionally in 1983, you discovered that --
21 or beginning in 1983, you no longer could locate the
22 research documents on Audicote that we discussed
23 earlier?

24 A. That's correct. That happened in March of

1 1983.

2 Q. And as of this date in 1986, those folders
3 approximately three feet high have not been located
4 to your knowledge?

5 A. In the last year, year and a quarter, I
6 have been shown a number of folders for my opinion
7 as to whether any of these in fact were any of the
8 documents that I had relating to the so-called
9 Audicote working files in 1980.

10 One file conforms to my recollection of
11 what those files looked like, but I cannot
12 positively confirm that any of these which I have
13 been shown in fact were those that I had.

14 Q. When were you shown this one that conforms?

15 A. I recall being shown it two weeks ago when
16 it conformed to my recollection. I may have been
17 shown that same one earlier in this same time period
18 I just described. But as of about two weeks ago, it
19 looked to me when I saw it that it conformed to my
20 recollection.

21 Q. Who showed it to you?

22 A. My former secretary.

23 Q. Was it one file folder?

24 A. Correct.

1 Q. Did she indicate that it was pulled from a
2 group?

3 A. I'm not sure. It was in the legal
4 department. It was on the sixth floor.

5 MR. SPEIGHTS: Mr. Cale, I paused hoping that
6 you would volunteer to go get that file or whatever
7 files I have been seeking since 1983. I don't want
8 to have to return and repeat this process. Is that
9 available?

10 MR. CALE: It is available. In fact, it is in
11 the document production system of the company, i.e.,
12 those documents that are regularly made available.
13 Why don't we -- I'm just trying to think for a
14 minute.

15 Let's take a break and let me confer with
16 counsel and see where we go on that one.

17 (WHEREUPON, discussion was had
18 off the record.)

19 MR. SPEIGHTS: Let's go back on the record.

20 BY MR. SPEIGHTS:

21 Q. Ms. Torrey, during the break, counsel has
22 provided me one file folder, less than an inch thick,
23 in a light green color marked Audicote.

24 Is this the file folder you were referring

1 to that conforms at least in part to what you recall
2 as being the way the research documents were set up?

3 A. Yes.

4 Q. You don't know whether this is one of the
5 three-foot stack or not?

6 A. I can't confirm it positively.

7 Q. And your recollection, I believe, is that
8 the file folders that you got in 1980 from the
9 research department were blue in color?

10 A. That's correct.

11 Q. And you don't know to this day anything
12 about either the balance of the three-foot stack or
13 the three-foot stack itself, if this is not one of
14 the stack?

15 A. That's correct.

16 MR. CALE: Obviously, subject to all the things
17 that she has testified to on this subject in her
18 prior deposition in this case.

19 MR. SPEIGHTS: I'm going to ask that counsel
20 provide me a copy of everything in this file folder
21 and the copy of the file folder itself.

22 MR. CALE: It will be done.

23 MR. SPEIGHTS: If possible, I would like to
24 have one thing done today to give me something to.

1 read on the airplane.

2 MR. CALE: We'll try.

3 BY MR. SPEIGHTS:

4 Q. Ms. Torrey, I think we have talked up to
5 now the period 1979 up through 1983. I want to talk
6 to you a few minutes about 1984.

7 You are aware that Judge Wilkins in the
8 Greenville case conducted a hearing on the
9 defendant's responses to discovery from January 9,
10 1984?

11 A. Yes.

12 Q. I believe your local counsel provided you
13 a copy of the ruling made by Judge Wilkins at that
14 hearing?

15 A. I was provided a portion of the transcript
16 which contained that rule, yes.

17 Q. I show you this document and ask you if it
18 is a portion of a transcript you were provided?

19 A. It appears to be.

20 Q. Insofar as as Judge Wilkins's ruling
21 applies to notice documents, I would ask you to read
22 that ruling which I have I believe bracketed for you.

23 A. The portion you have bracketed reads as
24 follows, "While I have considered these things, I



1 place all the parties on notice that this order is
2 being issued with the court's full understanding and
3 intent to apply rule 37(B)(2)(C) to any offending
4 party of this order which will include the court
5 entering a default judgment or dismissing the action
6 against the offending party.

7 There must be a time where these matters
8 are laid to rest and you get on to new business and
9 the business of resolving this controversy.

10 All the defendants shall answer within 30
11 days. I might add the court is going to review the
12 responding answers with its interpretation of good
13 faith, reasonable effort to comply and will not deal
14 nor allow justification to be based on semantics.

15 All defendants shall answer this
16 interrogatory that the court propounds which is
17 perhaps a combination of numbers that have already
18 been propounded. The date that the company or its
19 officers or its agents or its employees to the best
20 of that company's ability must state the date that
21 these individuals received information written or
22 oral, first became aware of, first became suspicious
23 of the fact that asbestos may be a harmful substance
24 and all similar information since that first date,

1 This includes information acquired
2 individually by the company, its officers, agents,
3 employees and information that was generally known
4 in the industry. It also includes any facts, any
5 data, any reports, any opinions which tend to
6 support the belief that asbestos is a harmful
7 product to health."

8 MR. SPEIGHTS: I'm going to ask that be marked
9 as Plaintiff's Exhibit 11.

10 (WHEREUPON, said document was marked
11 Plaintiff's Deposition Exhibit No. 11,
12 for identification, as of 7-29-86.)

13 BY MR. SPEIGHTS:

14 Q. Now, in response to that court order, did
15 you coordinate the U.S. Gypsum Company response?

16 A. Yes, I coordinated it.

17 Q. Did you and, I think, Mr. Smith in fact
18 prepare the first draft of it?

19 A. Yes.

20 Q. Did you consult with Mr. Snell concerning
21 the response?

22 A. Yes, briefly.

23 Q. I show you this document and ask you if
24 that is the response which U.S. Gypsum Company filed,

1 again in response to Judge Wilkins's ruling which
2 you have just read into the record?

3 A. Yes, it appears to be.

4 MR. SPEIGHTS: I ask that be marked as
5 Plaintiff's Exhibit 12.

6 (WHEREUPON, said document was marked
7 Plaintiff's Deposition Exhibit No. 12,
8 for identification, as of 7-29-86.)

9 BY MR. SPEIGHTS:

10 Q. Would you read the first two paragraphs of
11 that response?

12 A. "United States Gypsum Company (hereinafter
13 called 'USG') responds to the 'notice' interrogatory
14 propounded by the Honorable William W. Wilkins on
15 January 9, 1984 as follows:

16 A thorough review of USG files and
17 records which could be identified as possibility
18 containing information encompassed by this
19 interrogatory reveals that on or about September 3,
20 1948, is the earliest documented date upon which USG
21 or any of its officers, employees or agents in an
22 individual or corporate capacity first became
23 suspicious or aware that asbestos may be a harmful
24 substance."

1 Q. Now, Ms. Torrey, would you agree with me
2 that you did not reveal the letter from Mr. Brown to
3 Mr. Offutt of 1937 or the first progress report or
4 the Jersey City study prepared by Dr. Gardner in
5 1936 in response to the court's interrogatory?

6 A. Those documents were not produced or
7 identified in response to the court's interrogatory,
8 correct.

9 Q. Did you specifically discuss with Mr.
10 Snell whether he should revisit the issue of whether
11 these documents should be revealed in light of Judge
12 Wilkins' ruling?

13 A. I gave Mr. Snell a copy of the draft
14 response which had been prepared along with copies
15 of the documents we were proposing to identify and
16 produce and raised with him the question of the Keck
17 documents.

18 Q. And was Mr. Snell's position the same,
19 that is, that those documents should not be revealed?

20 A. His position was the same, that the proper
21 response on behalf of the company would include
22 documents which were United States Gypsum Company
23 documents, and that in his opinion, again, these
24 were not United States Gypsum Company documents.

1 Q. And, again, that was his judgment?

2 A. Correct.

3 Q. Did you provide or refer to the 1943
4 operating bulletin in response to Judge Wilkins'
5 notice interrogatory?

6 A. It does not appear on the list, no.

7 Q. Additionally on the second page, you refer
8 to the Saranac study or the memorandum of agreement.

9 Would you read that part of the paragraph
10 to me?

11 A. "Additionally, USG is aware of a
12 'memorandum of agreement' dated November 20, 1936
13 produced in other litigation which suggests that USG
14 may have contributed to a study conducted by Dr.
15 LeRoy Gardner at Saranac Lake Laboratory commencing
16 in 1936. However, as indicated on the listing, USG
17 could not confirm whether or to what extent it may
18 have participated in the study or received the
19 findings."

20 Q. Now, I believe shortly after that you
21 stated earlier you attended the trial of the
22 Lexington case in South Carolina?

23 A. Yes.

24 Q. And during that trial, Lexington's



1 attorneys attempted to introduce the memorandum of
2 agreement and the certain reports of Dr. Gardner.
3 Do you recall that?

4 A. I recall that you attempted to introduce
5 in the '36 agreement. Which of the other documents
6 you attempted to introduce, I do not recall.

7 Q. Would you agree with me that U.S. Gypsum's
8 local counsel while you were present resisted any
9 connection between U.S. Gypsum and Saranac during
10 that trial?

11 A. NO.

12 Q. You would not agree with that?

13 A. No, I would not. If you would like to
14 show me a transcript of the trial proceedings and
15 refresh my memory, I would be happy to review it,
16 but that's not my recollection of the discussion at
17 the trial.

18 Q. Well, I don't have a transcript with me,
19 but I'll certainly discuss that with Morgan, Lewis &
20 Bockius counsel who were also counsel at the
21 Lexington trial.

22 In addition to Judge Wilkins' notice
23 interrogatory, I believe Greenville followed up with
24 a special interrogatory inquiring as to where the

1 documents that were produced had been found?

2 A. Yes.

3 Q. Is that a copy of that special
4 interrogatory and U.S. Gypsum Company's response?

5 A. Before we get to this, I feel constrained
6 to point out since you're trying to create a clear
7 record, the question you raised to me about the
8 Lexington trial was did we dispute any connection
9 with Saranac. I am disputing your characterization
10 of what the controversy was.

11 You certainly -- plaintiff's attorneys for
12 Lexington certainly attempted to introduce the
13 memorandum of agreement and other documents in at
14 trial. But I think you need to refer to what the
15 argument was as to the basis of United States Gypsum
16 Company's objection and its argument.

17 Q. Would you agree with me that during that
18 trial and indeed prior to that trial, U.S. Gypsum
19 did not acknowledge any past relationship with
20 Saranac in the '30s or the '40s?

21 A. Not with respect to asbestos, and the
22 questions that were posed were always related to
23 asbestos. The question you're raising is any
24 relationship with Saranac whatsoever, not limited to



1 asbestos.

2 Q. Okay. Let's get the question straight.

3 Would you agree with me that during the
4 trial of the Lexington case, Lexington's attorneys
5 attempted to introduce a connection between U.S.
6 Gypsum and Saranac in regard to asbestos studies?

7 A. The plaintiff's attorneys for Lexington
8 attempted to introduce into evidence the memorandum
9 of agreement, and I seem to recall certain other
10 documents relating to the Sumner Simpson papers and
11 perhaps the entire Sumner Simpson file.

12 Q. Which dealt with asbestos?

13 A. Relating to asbestos.

14 Q. And would you also agree with me that U.S.
15 Gypsum's attorneys at the trial of the Lexington
16 case with you in attendance did not acknowledge any
17 past relationship between U.S. Gypsum and Saranac in
18 regards to asbestos?

19 A. The legal objection raised that I recall
20 was one of authentication of the documents you were
21 attempting to introduce into evidence.

22 Q. For what other reason would you agree that
23 U.S. Gypsum did not acknowledge any past
24 relationship between Saranac and U.S. Gypsum insofar

1 as asbestos?

2 A. That question I can't respond to without
3 referring to the transcript. I recall that the
4 basis of the objection was one of authentication of
5 the documents and it was limited to that issue.

6 Q. Now, let me review, because we kind of got
7 off base. On January 9, Judge Wilkins issued his
8 interrogatory which USG responded to in early
9 February. Lexington, I believe, was tried in early
10 April, is that your recollection?

11 A. Yes.

12 Q. On April 23, U.S. Gypsum responded to the
13 special interrogatory which Greenville served on
14 U.S. Gypsum asking about the source of the documents
15 it had produced, correct?

16 A. Yes.

17 MR. SPEIGHTS: I'm going to ask that this
18 interrogatory, special interrogatory and U.S. Gypsum's
19 response be marked collectively as Plaintiff's
20 Exhibit 13.

21 (WHEREUPON, said document was marked
22 Plaintiff's Deposition Exhibit No. 13,
23 for identification, as of 7-29-86.)

24 BY MR. SPEIGHTS:



1 Q. Did you coordinate this response, that is,
2 to the special interrogatory?

3 A. No, I didn't. I was aware of it and I
4 reviewed it, but -- in the broad sense, I
5 coordinated it, but I didn't prepare it.

6 Q. Would you agree with me that this document
7 reflects that USG did not conduct a review in detail
8 of the box found by Donna Woodruff and brought to
9 the legal department until after Judge Wilkins'
10 order of January 9, 1984?

11 A. I think the only way I can respond to that
12 is by reading that portion of the response. "The
13 order entered by this court was far broader than
14 discovery previously responded to by this defendant.
15 Because of its breadth, this defendant was required
16 to seek to determine the existence of files not
17 previously known to exist and to search through many
18 files not previously reviewed. This explains the
19 production of documents herein which this defendant
20 believes not fall within plaintiff's previous
21 discovery requests.

22 The existence of a box containing the
23 following documents was determined by (a) Donna
24 Woodruff, USG paralegal or (b) approximately

1 January/February, 1980. This box (C) was clearly
2 marked as pertaining solely to silicosis in the USG
3 corporate files storage facility located at 101
4 South Wacker Drive.

5 The file within which the documents were
6 located was (D) a box of insurance department papers,
7 specifically entitled 'Miscellaneous Workman's
8 Compensation Data - Silicosis Cases.' The
9 custodian of the documents at the time they were
10 located was (e) Dorothy Littlejohn, files.

11 Because this box was clearly labeled
12 'silicosis' they were never revealed in detail for
13 information relating to asbestos until this
14 defendant undertook a more extensive review of
15 documents in order to comply as fully as possible
16 with Judge Wilkins' order and therefore included..
17 this box in its search."

18 Q. And that search of the box was made
19 sometime in early 1984?

20 A. Yes.

21 Q. And that books contained some of Mr.
22 Kipp's papers?

23 A. There are papers in there which I recall,
24 and I would have to refer to the listing, which were



1 either sent to or authored by Mr. Kipp. I would not
2 characterize them as Mr. Kipp's papers.

3 Q. Would you read that paragraph for me?

4 A. "Shortly before his death in 1980, C.P.
5 Kipp then manager insurance stated that USG was not
6 a member of the Asbestos Cement Producers
7 Association although he had attended a few meetings
8 for his personal information only.

9 A search was made for these documents in
10 February, 1984 by S.K. Torrey specifically for the
11 purpose of responding to the notice interrogatories
12 heretofore propounded."

13 Q. Now, I want to refer back to --

14 A. Excuse me, but the question you posed to
15 me was were the Kipp papers -- the Kipp file in
16 that box.

17 Q. I understand that was the previous
18 question.

19 A. All right.

20 Q. And you responded to it and then I asked
21 you to read another section of this order which
22 refers to Kipp papers as well.

23 A. All right, fine.

24 Q. Now, I want to refer back to Exhibit 9.

1 which is the March 24, 1982 memo from you to Mr.
2 Snell and ask you to read that paragraph.

3 A. "Finally, as I showed you, there is
4 correspondence in some old files maintained by the
5 insurance department that Mr. Kipp in 1953 embarked
6 upon a project to gather articles concerning
7 asbestosis."

8 Q. In addition to that special interrogatory,
9 I believe Judge Wilkins issued another order after
10 the Lexington trial in April of 1984. Do you recall
11 that?

12 A. Yes.

13 Q. And that is what is sometimes been
14 referred to as an encompassment order?

15 A. Yes.

16 Q. Is that a copy of that order?

17 A. Yes.

18 MR. SPEIGHTS: I would ask that be marked as
19 Exhibit 14.

20 (WHEREUPON, said document was marked
21 Plaintiff's Deposition Exhibit No. 14,
22 for identification, as of 7-29-86.)

23 BY MR. SPEIGHTS:

24 Q. Let me see if I can characterize this

1 order without reading it and if you feel compelled
2 to read it, that's fine.

3 Would you agree with me that Judge Wilkins
4 required -- strike that. Would you read paragraph 2
5 of that order, please?

6 A. "The defendant shall on or before May 14,
7 1984 file their final responses to the plaintiff's
8 request to produce documents together with a
9 statement verified by the parties specifically
10 setting forth the encompassment of the search, the
11 person or persons who participated in the search and
12 the identification of all documents for which they
13 claim privilege."

14 Q. In response to that, did you personally
15 file an affidavit in compliance with -- or strike
16 that.

17 In response to Judge Wilkins' order in or
18 around April 25, 1984 marked as Exhibit 14, did you
19 prepare and file an affidavit?

20 A. Yes.

21 Q. Is that a copy of the affidavit?

22 A. In part.

23 MR. SPEIGHTS: Let's go off the record a minute.

24 (WHEREUPON, discussion was had

1 off the record.)

2 BY MR. SPEIGHTS:

3 Q. Is that a copy of the affidavit you filed
4 in response to Judge Wilkins' order?

5 A. Yes.

6 MR. SPEIGHTS: I ask that be marked as
7 Plaintiff's Exhibit 15.

8 (WHEREUPON, said document was marked
9 Plaintiff's Deposition Exhibit No. 15,
10 for identification, as of 7-29-86.)

11 BY MR. SPEIGHTS:

12 Q. I would ask you to read paragraph 9.

13 A. "At present, no other documents have been
14 located responsive to plaintiff's request to produce
15 dated January 13, 1983 as qualified by outstanding
16 objections and excluding privileged documents, if
17 any, and as already disclosed in United States
18 Gypsum Company's supplemental responses or
19 previously produced to plaintiff's counsel without
20 formal supplementation other than the attached which
21 was located recently."

22 Q. Now, at that time had you, by that I mean,
23 you, U.S. Gypsum, produced either Plaintiff's
24 Exhibit 2, the Brown to Offutt letter, Plaintiff's

1 Exhibit 3, the first progress report, or Plaintiff's
2 Exhibit 5, the Jersey City study of Dr. Gardner?

3 A. No.

4 Q. At that time, did you list or at any time
5 before had you listed any of those three documents
6 as being privileged?

7 A. No.

8 Q. At that time, had you provided a copy of
9 the 1943 operating bulletin which we have previously
10 marked?

11 A. No.

12 Q. What is the date of that affidavit, please,
13 Miss Torrey?

14 A. May 25th, 1984.

15 Q. I believe within several weeks, that the
16 boxes which you now believe Ms. Woodruff originally
17 located in 1980 were located by an attorney working
18 under you at the time?

19 A. Gary Smith, an attorney in the department,
20 found in the warehouse somewhere in the period June
21 15th to June 20th, '84 three boxes which we now
22 believe based upon the recently-found Donna Woodruff
23 memo to have been found by her in 1980.

24 Q. And in those three boxes, among other

1 things, were located Plaintiff's Exhibits 6 and 7,
2 that is, the summary of the Jersey City report and
3 the letter forwarding the summary and the report to
4 the law firm?

5 A. I have been told that.

6 Q. I'm going to show you another document
7 dated September 16, 1936 and ask whether that was
8 also located in the three boxes?

9 A. I don't know from personal knowledge. I
10 believe that that's where it came from. I have
11 been told that, but I don't know.

12 Q. Let me give you a series of five documents
13 and ask if it is your understanding that those five
14 documents were --

15 A. I think I have to first point out that
16 when the boxes were discovered, once Gary had
17 pointed out to me the existence of the Jersey City
18 study and I confirmed that it was the Jersey City
19 study, I did not thoroughly review the contents of
20 the box.

21 I pretty much stopped at that point. So I
22 really don't have personal knowledge of their
23 contents. I have been told that there was some
24 correspondence in these boxes relating to some sort

1 of a lawsuit that didn't directly involve the
2 company.

3 I assume that these are those and it came
4 out of the boxes, but I don't know that personally.

5 MR. SPEIGHTS: I'm going to have them marked
6 and if we can not work out a stipulation later, I'll
7 independently deal with the situation. But since I
8 have shown them to you, I want to mark them for the
9 record and I ask they be marked as follows:

10 Plaintiff's Exhibit 16 is a letter from
11 C.C. Scharwath to H.R. Barrett. It's noted at the
12 top, "Copy, United States Gypsum Company" dated
13 September 16, 1937.

14 (WHEREUPON, said document was marked
15 Plaintiff's Deposition Exhibit No. 16,
16 for identification, as of 7-29-86.)

17 MR. SPEIGHTS: Exhibit 17, a letter from
18 Assistant To President to J.A. Scharwath on U.S.
19 Gypsum Company letterhead dated September 29, 1937.

20 (WHEREUPON, said document was marked
21 Plaintiff's Deposition Exhibit No. 17,
22 for identification, as of 7-29-86.)

23 MR. SPEIGHTS: Exhibit 18, a letter from J.S.
24 Offutt, Assistant to President, to Scott, MacLeish &

1 Falk which we have been referring to as the Keck law
2 firm, on U.S. Gypsum Company letterhead dated
3 September 29, 1937.

4 (WHEREUPON, said document was marked
5 Plaintiff's Deposition Exhibit No. 18,
6 for identification, as of 7-29-86.,

7 MR. SPEIGHTS: Exhibit 19 is a letter from John
8 J. Cuneo Cuneo of Jersey City, to the Keck law firm
9 dated October 8, 1937.

10 (WHEREUPON, said document was marked
11 Plaintiff's Deposition Exhibit No. 19,
12 for identification, as of 7-29-86.)

13 MR. SPEIGHTS: Exhibit 20 is a letter from an
14 unidentified source unless otherwise identified in
15 the body to John J. Cuneo dated October 28, 1937.

16 (WHEREUPON, said document was marked
17 Plaintiff's Deposition Exhibit No. 20,
18 for identification, as of 7-29-86.)

19 BY MR. SPEIGHTS:

20 Q. Would you agree with me from reading these
21 documents that they report an allegation that
22 someone who was a bookkeeper at the Jersey City
23 plant sustained asbestosis?

24 A. I didn't read them that carefully. Would



1 it be easier if I just read this paragraph?

2 Q. Yes, just do that.

3 A. "For my dad, ask if you would care to help
4 him with a review of the Gypsum Company's experience
5 with silicosis or asbestosis. Recall that you had
6 told me about several cases that the company had and
7 he now has a suit against him by a former assistant
8 bookkeeper of the old National Asbestos Company
9 whose desk at least more than 200 feet away from any
10 other machinery as well as being segregated in the
11 office from the factory."

12 MR. SPEIGHTS: Let me take a break just a
13 minute. I believe that's going to be all.

14 (WHEREUPON, a recess was had.)

15 BY MR. SPEIGHTS:

16 Q. Miss Torrey, I understand that on August
17 20, 1984, you ceased any involvement with the
18 defense of asbestosis, either personal injury or
19 property damage?

20 A. Yes.

21 Q. And prior to that date, you did not
22 supplement or amend your affidavit filed with Judge
23 Wilkins?

24 A. There was no supplementation or



1 modification of the affidavit, that's correct.

2 Q. And to your knowledge, there was no
3 supplementation or modification to the responses to
4 discovery, Judge Wilkins' discovery between the time
5 you filed those in the spring of '84 until August 20,
6 1984?

7 A. There was none filed, no.

8 MR. SPEIGHTS: Thank you. That's all I have.

9 MR. CALE: I have a few questions.

10 EXAMINATION

11 BY MR. CALE:

12 Q. Ms. Torrey, I would ask you again to look
13 at the series of documents that counsel has marked
14 Plaintiff's Exhibit 16 through Plaintiff's Exhibit
15 20 and direct your attention to the document
16 Plaintiff's Exhibit 20 which I believe is the
17 response of someone to Mr. John J. Cuneo, the
18 attorney for Mr. Scharwath replying to his letter of
19 October 8th which was marked as Plaintiff's Exhibit
20 19, and I would ask you if you would read into the
21 record just the first sentence of the beginning
22 paragraph on page 2 of that letter?

23 A. "We have not had occasion to defend any
24 case brought for asbestosis which is one of the two

1 recognized diseases resulting from the breathing of
2 dangerous dust, the other being silicosis."

3 Q. Thank you.

4 MR. SPEIGHTS: Could I ask the date of that?

5 BY MR. CALE:

6 Q. Also on this exhibit, are there initials
7 of the author of that letter and the typist?

8 A. Yes.

9 Q. And what are those initials?

10 A. CMP and the typist's initials are IC.

11 Q. And is the letter to which that is a
12 response Plaintiff's Exhibit 19 addressed to Charles
13 M. Price whose initials are CMP?

14 A. Yes.

15 MR. SPEIGHTS: Would you mind her stating the
16 date of that letter before you move to another
17 subject?

18 BY MR. CALE:

19 Q. Could you tell us the date of that letter,
20 please, Exhibit 20?

21 A. October 28, 1937.

22 Q. To your knowledge, by the way, was John J.
23 Cuneo of 921 Bergen Avenue, Jersey City, New Jersey
24 an attorney working for United States Gypsum Company?

1 A. I'm not aware that he was.

2 Q. I now show you Plaintiff's Exhibit 5 which
3 we have referred to as the Jersey City study and I
4 believe plaintiff's counsel had you read into the
5 record a paragraph appearing on page 4 which reads
6 as follows: "The authors of the report conclude
7 that it is not possible from their findings to
8 establish the maximum safe concentration of asbestos
9 dust in the air."

10 Following that paragraph, there is another
11 paragraph in the report on page 5 and I would ask
12 that you read the first full paragraph on page 5 of
13 that report.

14 A. "While asbestosis may be a milder type of
15 fibrosis than is silicosis, it does not appear from
16 the studies mentioned above that a standard for a
17 safe concentration of asbestos dust would permit a
18 greater concentration than the value already given
19 for free silica dust. It is quite possible that the
20 safe limit might be even lower for asbestos than for
21 silica.

22 For present, it would seem best to attempt
23 to keep the concentration of asbestos dust less than
24 than 5 million particles per cubic foot of air



1 counted by light field examination."

2 Q. Counsel also had asked about the Lexington
3 trial and position of the company at that trial with
4 respect to its relationship with Saranac Lake
5 Laboratory?

6 A. Yes.

7 Q. At the time of the Lexington trial, had a
8 copy of the 1949 final report of the asbestos
9 studies done at Saranac Lake been identified and
10 provided to plaintiff's counsel?

11 A. Yes.

12 Q. And in what case was that final report
13 provided?

14 A. Greenville.

15 Q. And that was prior to the trial of the
16 Lexington case?

17 A. Yes.

18 Q. In connection with the questions about the
19 finding of certain of the documents that have been
20 identified here by Donna Woodruff in 1980, were you
21 at that time in the process of responding to any
22 discovery requests in property damage litigation?

23 A. No.

24 Q. And were those documents at that time

1 required to be produced pursuant to any discovery
2 requests in property damage litigation?

3 A. No.

4 Q. Referring now to Plaintiff's Exhibit 9
5 which is your memorandum to Mr. Snell discussing
6 certain operating bulletins of the company, I would
7 direct your attention to the second page of that
8 memorandum and ask you to read into the record the
9 second full paragraph?

10 A. "The second bulletin which has surfaced is
11 another operating bulletin which is labeled
12 hazardous chemical used in paint manufacture. It is
13 No. 602 and was promulgated on 8-11-48. The
14 historical file copy carries the notation 'expired'
15 by the section which refers to asbestos."

16 Q. Are you familiar with that bulletin?

17 A. Yes, I am.

18 Q. Can you tell us in essence what it states?

19 A. With respect to asbestos, it on the
20 lefthand column states the term asbestos and in the
21 next column, purports to discuss the disease
22 resulting and I believe contains language to the
23 effect of prolonged exposure to breathing asbestos
24 dust can cause a disabling long condition known as

1 asbestosis.

2 Q. Was that document provided voluntarily by
3 the company in response to a discovery request
4 served in asbestos property damage litigation?

5 A. Yes.

6 Q. And can you tell us approximately when
7 that document was first produced to any plaintiff in
8 the property damage asbestos litigation?

9 A. June, 1983.

10 Q. And do you know in which case and to which
11 plaintiff's counsel that document was produced?

12 A. I believe it was Greenville Lexington, but
13 we could check the records.

14 Q. Who would counsel have been in that case
15 for the plaintiff?

16 A. Mr. Speights.

17 Q. And was that prior to Judge Wilkins
18 entering his notice interrogatory?

19 A. Yes.

20 Q. And by approximately how many months?

21 A. Six, seven.

22 Q. Counsel referred to the documents that
23 appeared in the Asbestos Litigation Reporter and I
24 believe represented that in that reporter in the

1 late '70s, the 1936 memorandum agreement and three
2 progress reports were included and reported on. Do
3 you recall the questions regarding that subject?

4 A. Yes.

5 Q. Do you recall the dates of those progress
6 reports that were reported in the Asbestos
7 Litigation Reporter at the time the 1936 memorandum
8 agreement was published?

9 A. I believe they were all 1937.

10 Q. To your knowledge, was the 1943 monograph
11 that counsel has referred to reported in the
12 Asbestos Litigation Reporter as one of those
13 progress reports?

14 A. As one of the progress reports, no.

15 Q. To your knowledge, has a copy of the 1943
16 monograph ever been located in any United States
17 Gypsum company file?

18 A. I have never seen the 1943 monograph. I
19 have never been told that it was found in any United
20 States Gypsum Company file. I certainly never found
21 it.

22 Q. Referring to the 1936 agreement, does that
23 agreement indicate how the agreement came into being?

24 A. Well, the second paragraph states, and I'm

1 reading, "The general nature of these experiments
2 and the cost thereof were explained at a meeting of
3 certain brake lining manufacturers held in New York
4 City on November 19, 1936."

5 Q. Has United States Gypsum Company to your
6 knowledge ever manufactured brake linings?

7 A. No.

8 Q. And does the memorandum agreement indicate
9 the period of time that the experiments are to be
10 underwritten by the signatories to that agreement?

11 A. The next paragraph states "for a period of
12 three years."

13 Q. And the date of the agreement is what?

14 A. November 20, 1936.

15 Q. And three years from that date would be
16 what?

17 A. November 20, 1939.

18 MR. CALE: Could we excuse ourselves? I only
19 have one more question. I just want to make sure
20 that we agree to get into it.

21 MR. SPEIGHTS: You want to talk to her?

22 MR. CALE: I just want to her --

23 MR. SPEIGHTS: I'm about as liberal as anybody
24 I know, but I just don't think it's proper to chat



1 with the witness while you have got her under
2 examination. I can't physically stop you.

3 MR. CALE: Oh, I know. Okay. Let's just go
4 off the record for a minute.

5 MR. SPEIGHTS: Sure.

6 (WHEREUPON, discussion was had
7 off the record.)

8 BY MR. CALE:

9 Q. Ms. Torrey, counsel has established that
10 at the time the answers were filed to Judge Wilkins'
11 notice interrogatory, the 1934 operating bulletin
12 with respect to dusty conditions was not identified
13 in the list of documents provided.

14 A. Yes.

15 Q. Can you tell us why that was not included
16 as best you can recall?

17 A. I didn't realize at the time I was
18 preparing the responses that that bulletin existed.
19 I had a paralegal assisting me and I asked that she
20 secure all the bulletins on the x-ray program, and I
21 specifically recall asking her to make sure that we
22 had them all and to verify that we had them all and
23 she informed me that we had them all and we produced
24 them.

1 Looking at the '43 bulletin now, I see it
2 bears a different bulletin number and I can
3 understand why it may not have been given to her
4 when she asked for all of the x-ray bulletins.
5 There was no intent on our part not to produce it.
6 I simply had forgotten about the memo. If I had
7 known, I would have produced them irrespective of
8 the date.

9 Q. Am I correct that as of the date of the
10 answers to the notice interrogatory, United States
11 Gypsum had already some seven months before provided
12 a document showing notice certain hazards of
13 asbestos as early as 1948?

14 A. Yes, and the '54 memorandum also referred
15 to in that memorandum was produced in response as to
16 the notice interrogatory.

17 Q. Turning to 1983 when I believe you
18 testified that at least the documents marked as
19 Plaintiff's Exhibits 3 -- excuse me -- 2, 3 and 5
20 which are the letter from Mr. Brown to Mr. Offutt,
21 the first progress report and the Jersey City study,
22 that they were returned to the Keck firm, do you
23 recall that?

24 A. Yes.

1 Q. And could you tell us why they were
2 referred to the Keck firm?

3 A. I was requested by Mr. Snell to have them
4 returned because they were Keck documents. They
5 were not documents of United States Gypsum Company
6 and he felt they belonged with the law firm.

7 Q. And I think you also testified that there
8 was no inventory prepared of those documents when
9 they were returned to the Keck firm nor any
10 transmittal letter nor any receipt of which you are
11 aware, is that correct?

12 A. That's correct.

13 Q. And can you tell us why no documents of
14 that type were prepared?

15 A. Because these were law firm documents
16 being returned to the law firm as their documents, I
17 saw no need to retain an inventory of what of theirs
18 I had had previously in my possession. No
19 transmittal letter was prepared because we
20 frequently dealt with the firm on a telephone basis
21 and that was done in this instance. They knew to
22 expect it.

23 I did not ask that a receipt be prepared
24 since the documents were being hand carried. They



1 knew they were coming. There was no reason to
2 suggest they weren't going to make it there and
3 because they were their documents, I didn't need a
4 receipt for them.

5 Q. During the period that you were
6 responsible for or coordinating the responses to
7 discovery requests in the property damage asbestos
8 litigation, were all of the answers filed by United
9 States Gypsum Company filed in good faith and in
10 conformity with the legal judgment of the counsel
11 answering them as they interpreted the request being
12 made?

13 A. Yes.

14 Q. And finally, with respect to your
15 affidavit in response to the court's encompassment
16 interrogatory is that a truthful affidavit?

17 A. Yes.

18 MR. CALE: I have no further questions.

19 EXAMINATION (Resumed.)

20 BY MR. SPEIGHTS:

21 Q. Ms. Torrey, interrogatory 77 in the
22 Greenville case and in the Lexington case
23 stated "Did you direct to be performed, sponsor
24 finance or receive the results of any studies or



1 tests performed by the Saranac Lake Laboratory or
2 the Trudeau Foundation relating to asbestos exposure
3 and its effect on human life, and the answer was "None
4 of which this defendant is currently aware."

5 My understanding is one reason you did not
6 reveal the Brown to Offutt letter and the first
7 progress report was based upon Mr. Snell's judgment
8 that they did not have to be produced. Is that
9 correct?

10 A. As I have stated it, yes.

11 Q. In addition to that, United States Gypsum
12 took the position that they did not have to reveal
13 such documents because they referred to animal
14 studies and the interrogatory referred to asbestos
15 exposure and its effect on human life.

16 A. That was a position taken at the time that
17 answer was drafted. That was one of the positions,
18 yes.

19 Q. Is that one of the positions United States
20 Gypsum took in good faith?

21 A. Yes.

22 Q. You would agree with me, Ms. Torrey, that
23 Saranac was not testing animals to see the effects
24 on animals, that is, we weren't trying to save the



1 rat population of the world, were we?

2 A. I don't know, Mr. Speights. I have stated
3 what the position of the company was in 1983. In
4 the intervening years, it has been made clear tha
5 quote unquote semantic differences would no longer
6 be tolerated.

7 I believe that question and that answer in
8 part falls into what has now been termed semantic
9 differences. There is nothing more I can state on
10 the subject.

11 Q. You would agree with me that we were
12 testing rats to determine ultimately the effects of
13 asbestos on humans?

14 A. I believe I previously testified that I
15 knew it was a rat study or guinea pigs or some
16 animal and that at least in part, one of the reasons
17 for the study was to determine if the effect was one
18 of a chemical property or a physical property.

19 Q. Because of our concern as to what it might
20 do to human beings?

21 A. That would have to be the next step.

22 Q. Ms. Torrey, I think you have testified
23 upon examination by Mr. Cale that you provided the
24 1948 bulletin as early as 1983?

1 A. Yes.

2 Q. And U.S. Gypsum in fact took the position
3 with Judge Wilkins that 1948 was the earliest date
4 documented date upon which USG had notice of the
5 health effects of asbestos?

6 A. Based upon the information I had available
7 to me and which I recalled at the time, that was the
8 earliest date we could verify from company sources
9 as I have defined company sources.

10 Q. But the 1943 document discusses asbestos?

11 A. Yes, it does.

12 Q. The 1943 document also discusses Saranac,
13 doesn't it?

14 A. I believe it does.

15 Q. And the 1948 document nor the 1954
16 document discuss Saranac, do they?

17 A. Well, the '43 document talks about sending
18 preemployment physical information to Saranac for
19 evaluation. That's a different aspect of Saranac
20 than the '36 agreement on animal studies.

21 Q. The 1943 document at least documents that
22 U.S. Gypsum was using Saranac to review its x-rays?

23 A. May I see it?

24 Q. Here it is.



1 MR. CALE: Why don't you read it into the
2 record?

3 BY THE WITNESS:

4 A. The '43 bulletin contains the statement,
5 "Such a medical examination," which is referring to
6 preemployment physicals, "shall include the taking
7 of chest x-rays and interpretation by Saranac
8 Laboratories as set forth in bulletin 4-5," which
9 bulletin I believe I testified we could not then
10 find. Frankly, I don't know if it's ever been found.

11 BY MR. SPEIGHTS:

12 Q. And one of the reasons that you had sent
13 or U.S. Gypsum Company would send x-rays to Saranac
14 was to see if the person had a past exposure to
15 asbestos, correct?

16 A. That's a question?

17 Q. Yes. Wasn't that one of the reasons?

18 MR. CALE: I don't think that's a full question.

19 BY MR. SPEIGHTS:

20 Q. Wasn't the reason at least one of the
21 reasons for sending x-rays to Saranac -- strike that.

22 Wasn't one of the circumstances which
23 x-rays would be send to Saranac, a situation where a
24 person was hired or potentially would be hired with



1 a questionable history of exposure to asbestos?

2 MR. CALE: Object to that question. It's a
3 double question. It's the difference between
4 employees and preemployment examinations and I think
5 your question encompassed both.

6 MR. SPEIGHTS: I'll rephrase it.

7 BY MR. SPEIGHTS:

8 Q. Doesn't that bulletin require that persons
9 before they are hired who have a previous exposure
10 to asbestos have x-rays taken and examined by
11 Saranac?

12 A. Let me read the bulletin. I have no
13 independent knowledge of the contents of the
14 bulletin. It states "It is recommended that before
15 any applicant for employment is hired, the history
16 of his previous employment be fully developed. If
17 there is a questionable history of exposure to
18 asbestos or silica dust or an indicated partial lung
19 disabilities such as TB, the applicant should not be
20 employed until satisfactorily passing a medical
21 examination. Such a medical examination shall
22 include the taking of chest x-rays and their
23 interpretation by Saranac Laboratories as set forth
24 in bulletin 4-5."

1 Q. And, again, the 1948 bulletin and the 1954
2 bulletin do not refer to Saranac?

3 A. It's an entirely different bulletin.

4 Q. I understand that. But the bulletins you
5 did supply in 1983 and early 1984 did not refer to
6 Saranac for whatever reason?

7 A. I'll take your word for it that they don't
8 refer to Saranac. I don't recall that they do.

9 Q. I believe you stated upon questioning by
10 Mr. Cale and earlier under my questions that the
11 issue at the Lexington trial concerning the
12 memorandum of agreement was one of authentication?

13 A. I'm sorry. Would you just restate what
14 you just said?

15 MR. SPEIGHTS: Read it back, please.

16 (WHEREUPON, the record was read
17 by the reporter as requested.)

18 BY THE WITNESS:

19 A. Yes.

20 BY MR. SPEIGHTS:

21 Q. Did you reveal during the Lexington trial
22 that Mr. Snell had interviewed Mr. Shaver as to
23 whether or not that was Mr. Shaver's signature?

24 A. I don't recall that that was part of the

1 argument.

2 MR. SPEIGHTS: Thank you. That's all I have.

3 Let me ask one thing just as a postscript. I really
4 don't want it as part of the deposition. Is this
5 one file now that's been furnished on the research
6 the same general format as the stack of files?

7 THE WITNESS: In general, yes.

8 FURTHER DEPONENT SAITH NOT.

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1 STATE OF SOUTH CAROLINA)
) SS:
 2 COUNTY OF C KERSHAW)

3 STATE OF SOUTH CAROLINA, COUNTY OF KERSHAW
 4 IN THE COURT OF COMMON PLEAS

5 KERSHAW COUNTY BOARD OF EDUCATION,)
)
 6 Plaintiff,)
)
 7 vs.) No. 85-CP-28-58
)
 8 W.R. GRACE AND CO., et al.,)
)
 9 Defendants.)

10 I hereby certify that I have read the
 11 foregoing transcript of my deposition given at the
 12 time and place aforesaid, consisting of Pages 1 to
 13 103 inclusive, and I do again subscribe and make
 14 oath that the same is a true, correct and complete
 15 transcript of my deposition so given as aforesaid,
 16 and includes changes, if any, so made by me.

17 SUZANNE KAY TORREY

18
 19 SUBSCRIBED AND SWORN TO
 20 before me this day
 of , A.D. 198 .

21 Notary Public
 22
 23
 24



1 STATE OF ILLINOIS)
2) SS:
COUNTY OF C O O K)

3 I, SUSAN M. MARTINO, a Notary Public
4 within and for the County of Cook, State of
5 Illinois, and a Certified Shorthand Reporter of said
6 state, do hereby certify:

7 That previous to the commencement of the
8 examination of the witness, the witness was duly
9 sworn to testify the whole truth concerning the
10 matters herein;

11 That the foregoing deposition transcript
12 was reported stenographically by me, was thereafter
13 reduced to typewriting under my personal direction
14 and constitutes a true record of the testimony given
15 and the proceedings had;

16 That the said deposition was taken before
17 me at the time and place specified;

18 That the reading and signing by the
19 witness of the deposition transcript was agreed upon
20 as stated herein;

21 That I am not a relative or employee or
22 attorney or counsel, nor a relative or employee of
23 such attorney or counsel for any of the parties
24 hereto, nor interested directly or indirectly in the

DEPOSITION DESIGNATION OF
ROBERT H. TAYLOR

Deposition Taken in School District of Independence Missouri No.
30 v. United States Gypsum Co., et al., No. CV 84-05334 (Mo. Cir.
Ct. July 25, 1986).

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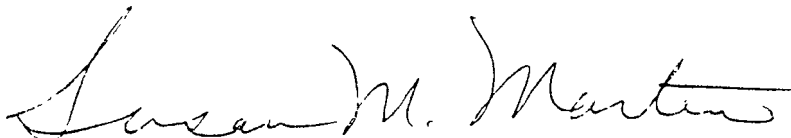
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outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my
hand and affix my seal of office at Chicago,
Illinois, this 8th day of August,
1986.


Notary Public Cook County, Illinois.
My commission expires February 7, 1987.

C.S.R. Certificate No. 84-1990.



Wolfe, Rosenberg and Associates, Inc.

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