

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- - -

IN RE: NEW YORK CITY ASBESTOS LITIGATION

THIS DOCUMENT RELATES TO ALL WEITZ & LUXENBERG
CASES IN WHICH GEORGIA-PACIFIC, LLC, IS A
DEFENDANT.

DEPOSITION OF
STEWART E. HOLM
JUNE 6, 2011
9:33 A.M.

KING & SPALDING
1180 PEACHTREE STREET
SUITE 1600
ATLANTA, GEORGIA

Reported By

Jennifer Ammerman, RPR, CSR-2656

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

On Behalf of the Plaintiffs:

Weitz & Luxenberg, PC
BY: JERRY KRISTAL, ESQ.
200 Lake Drive East
Suite 205
Cherry Hill, New Jersey 08002
856-755-1115
jkristal@weitzlux.com

On Behalf of the Defendant:

King & Spalding
BY: RICHARD A. SCHNEIDER, ESQ.
1180 Peachtree Street
Suite 1600
Atlanta, Georgia 30309
404-572-4889
dschneider@kslaw.com

Lynch, Daskal & Emery, LLP
BY: SCOTT EMERY, ESQ.
264 West 40th Street
New York, New York 10018
212-302-3400
emery@lawlynch.com

Also Present: John C. Childs, Esq.

Safaa Sammader, Videographer

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1 THE VIDEO OPERATOR: My name is
2 Safaa Sammader of Priority One
3 Reporting. Today's date is June 6,
4 2011. The time is approximately 9:33
5 a.m. This deposition is being held
6 in the office of King & Spalding,
7 1180 Peachtree Street, Atlanta,
8 Georgia.

9 The caption of the case is In Re:
10 New York City Asbestos Litigation
11 filed in the Supreme Court of the
12 State of New York, County of New
13 York. The name of the witness is
14 Stewart E. Holm.

15 At this time will the attorneys
16 identify themselves for the record
17 after which our court reporter,
18 Jennifer Ammerman of Priority One
19 Reporting, will swear in the witness
20 and then we can proceed.

21 MR. KRISTAL: Jerry Kristal from
22 Weitz & Luxenberg.

23 MR. EMERY: Scott Emery from
24 Lynch, Daskal & Emery.

25 MR. SCHNEIDER: Richard

1 Schneider, King & Spalding, for the
2 defendant Georgia-Pacific, LLC.

3 - - -

4 STEWART E. HOLM,
5 having been first duly sworn,
6 was examined and testified as follows:

7 - - -

8 EXAMINATION

9 BY MR. KRISTAL:

10 Q. Good morning, Mr. Holm. As you just
11 heard, my name is Jerry Kristal. How are you?

12 A. Doing quite well. Thank you.

13 Q. I represent a number of individuals who
14 have a variety of asbestos-related diseases
15 including mesothelioma who have brought lawsuits
16 and are alleging that their exposure to
17 Georgia-Pacific asbestos joint compound
18 contributed to the development of their asbestos
19 disease.

20 Do you generally have an understanding
21 of that?

22 A. Yes, I do.

23 MR. SCHNEIDER: Object to the
24 form.

25 BY MR. KRISTAL:

1 Q. Do you know what mesothelioma is?

2 A. I do, sir.

3 Q. What is mesothelioma?

4 A. It's cancer of pleural tissue in the
5 mesothelial cells.

6 Q. And do you know that it's universally
7 fatal?

8 A. Yes, I do.

9 Q. And that its if not exclusive almost
10 exclusive cause is asbestos exposure?

11 A. I agree with that, yes.

12 Q. Have you ever been deposed before?

13 A. Yes.

14 Q. How many times have you been deposed
15 before?

16 A. Three.

17 Q. When was the first and when was the
18 last?

19 A. The first one's easy. It was on
20 9/11/2001, and then I'm not sure of the other
21 two times I was deposed. Maybe eight years ago
22 and then six years ago.

23 Q. Do you understand you're being deposed
24 here today as speaking on behalf of the
25 Georgia-Pacific Company?

1 A. I understand that.

2 Q. Did you testify in the prior
3 depositions in the same capacity?

4 A. Yes, I did.

5 Q. Did those cases involve litigation
6 against Georgia-Pacific?

7 A. They did.

8 Q. What was the substances that were
9 involved or the product involved?

10 A. The first one was particle board. The
11 second one was CCA-treated lumber and the third
12 one was ACQ-treated lumber.

13 Q. Now, the CCA treated and the ACQ-
14 treated lumber, those are preservatives, so to
15 speak, in wood that there were allegations were
16 causing injuries?

17 A. That's correct.

18 Q. And were you specially employed as part
19 of some litigation work for those two products?

20 A. Could you define specially employed?
21 I'm not quite sure what you mean.

22 Q. Okay. We'll get there in a few
23 minutes.

24 A. Okay.

25 Q. You had published a few articles on CCA-

1 treated and ACQ-treated lumber, correct?

2 A. I have.

3 Q. And coauthors of yours for those
4 articles were with a consulting firm called
5 Exponent. You're familiar with them?

6 A. I am.

7 Q. Okay. Did you -- strike that. Did
8 Georgia-Pacific hire Exponent to do some
9 litigation projects on the CCA-treated and ACQ-
10 treated wood?

11 A. Those -- no, I wouldn't define it as
12 that. Those were product stewardship projects
13 for those two treated lumber types.

14 Q. What do you mean products --
15 stewardship projects?

16 A. We were looking at to see -- there is
17 data gaps in term of specifically with CCA that
18 we wanted to explore to see if the answers that
19 were incurred were beyond what the fault
20 parameters were being used by regulatory
21 authorities.

22 Q. Those two articles were used in support
23 of Georgia-Pacific's litigation position in
24 those litigations, right?

25 MR. SCHNEIDER: I'm going to

1 object to the question and point out,
2 Jerry, that he is noticed here today,
3 as you mentioned, as a 30(b)(6) type
4 witness, person most knowledgeable
5 under a specific notice that relates
6 to specific articles.

7 These are background questions it
8 seems to me that you're asking. He's
9 not specifically designated to talk
10 on these topics on behalf of the
11 company. So I just wanted to put
12 that objection on the record. We'll
13 see where this goes and... But this
14 is supposed to be under the notice
15 that you've issued in the litigation
16 for his deposition so...

17 MR. KRISTAL: Well, you're not
18 taking the position that someone
19 who's designated as most
20 knowledgeable by a defendant in
21 litigation can't be asked questions
22 about background work.

23 MR. SCHNEIDER: I think that the
24 specific rules require that he gives
25 testimony on the topics listed in the

1 notice and not a bunch of background
2 stuff that's outside the topics of
3 the notice.

4 Having said that, if you're just
5 exploring his background in a limited
6 fashion, we'll see how it goes on a
7 question-by-question basis.

8 MR. KRISTAL: Can you read back
9 my last question.

10 (Record read.)

11 THE WITNESS: They were used in
12 support. They were conducted before
13 any litigation occurred. Like I
14 said, they were conducted as a
15 product stewardship perspective.

16 BY MR. KRISTAL:

17 Q. Well, CCA-treated lumber had been
18 banned at the time that the studies were
19 conducted, right?

20 A. It -- CCA-treated lumber has not been
21 banned.

22 Q. What was the particle board litigation
23 about?

24 A. It was a -- our particle board was in
25 a, quote/unquote, "dump" in Mississippi

1 and they thought it was somehow affecting the
2 environmental condition in that area.

3 Q. Did you hire any outside consultants to
4 do work on that litigation as you've done in
5 this litigation?

6 A. No.

7 Q. My primary suggestion to you is, and
8 I'd ask you to try to obey it, is if you don't
9 understand what I'm asking you, just don't
10 answer the question. Let me know you don't
11 understand and then it's up to me to reword the
12 question or withdraw it and ask another question
13 because it's not helpful to me if you're
14 answering questions that you're not
15 understanding. Is that okay?

16 A. Sure.

17 Q. Now, you have been at Georgia-Pacific
18 since 1992?

19 A. It'll be 19 years this 29th of June.

20 Q. So June 29, 1992, is when you started?

21 A. Sounds about right.

22 Q. And currently your regular employee
23 title at Georgia-Pacific is director of
24 toxicology and chemical management?

25 A. It is.

1 Q. How long have you been director?

2 A. About a year and a half.

3 Q. Now, in addition to your regular duties
4 at Georgia-Pacific, you've also had special
5 employment duties, have you not?

6 MR. SCHNEIDER: Object to the
7 form.

8 A. I -- I guess I don't
9 understand special employment
10 duties.

11 BY MR. KRISTAL:

12 Q. Well, there are three lawyers here from
13 Georgia-Pacific, correct?

14 A. One from Georgia-Pacific.

15 Q. One in-house lawyer. That's
16 Mr. Childs --

17 A. That's correct.

18 Q. -- sitting at the end of the table?

19 A. That's correct.

20 Q. And the two other lawyers are outside
21 counsel, so to speak?

22 A. Yes.

23 Q. Mr. Emery and Mr. Schneider.

24 A. Um-hum. Yes.

25 Q. Are you saying that Mr. Childs did not

1 engage you as a special employee in addition to
2 your regular employee duties at Georgia-Pacific,
3 relating to asbestos litigation?

4 MR. SCHNEIDER: Object to the
5 form.

6 A. I think I've never
7 been called a special whatever but I
8 think it could be described in that
9 way.

10 MR. KRISTAL: Well, let me mark
11 as Exhibit 1 -- can we go off the
12 video record for a second.

13 THE VIDEO OPERATOR: The time is
14 9:43 a.m. Going off the video
15 record.

16 (Discussion held off the record.)

17 (Exhibit 1 was marked for
18 identification.)

19 THE VIDEO OPERATOR: Back on the
20 record. The time is 9:44 a.m.

21 MR. KRISTAL: I'm handing first
22 to Mr. Schneider what I've marked as
23 Exhibit 1 which is an August 22, 2005
24 letter and the Bates Number is NYCAL8
25 and 9. I'm leaving out all the

1 prefix zeros.

2 BY MR. KRISTAL:

3 Q. Do you see that in front of you?

4 A. Yes.

5 Q. And that is a letter that was written
6 August 22, 2005, from Mr. Childs, who's here in
7 the room, to you, is it not?

8 A. Yes, it is.

9 Q. And Mr. Childs' name on the upper
10 right-hand corner lists him as the chief
11 litigation counsel for Georgia-Pacific, correct?

12 A. I see that, yes.

13 Q. And you were aware that Mr. Childs had
14 a few months prior to August of 2005 joined
15 Georgia-Pacific as its first chief litigation
16 counsel. Are you aware of that?

17 A. I didn't know that, no.

18 Q. Were you aware that Mr. Childs' role at
19 Georgia-Pacific as chief litigation counsel was
20 to develop and design an in-house defense to
21 asbestos litigation?

22 MR. SCHNEIDER: Object to the
23 form. And also if that requires you
24 to disclose attorney/client
25 privileged communications, then I

1 will instruct you not to disclose any
2 such communications.

3 A. I didn't know that was the
4 purpose of his employment.

5 BY MR. KRISTAL:

6 Q. Okay. At some point we'll print this
7 out but I have something on my laptop I want to
8 show you and we'll mark it as Exhibit 2 in
9 hyper-space for now. I'll hand it to
10 Mr. Schneider first.

11 I'm going to scroll down. This is an
12 article entitled "Lawyer Plants New Roots at
13 Georgia-Pacific." It's an article about
14 Mr. Childs. If you would take a look. Do you
15 see that?

16 A. Okay.

17 Mr. SCHNEIDER: I'm going to
18 object to the question and object to
19 the exhibit. This is not a topic
20 listed in the deposition notice, to
21 talk about Mr. Childs' background and
22 what Mr. Holm knows about it. I note
23 that objection but you can answer.

24 BY MR. KRISTAL:

25 Q. This is an article about Mr. Holm. Do

1 you see that? I'm sorry. You're Mr. Holm.

2 A. Yeah.

3 Q. Mr. Childs.

4 A. I know it wasn't me. Okay. Yes.

5 Q. Okay. And you see in the big paragraph
6 down in the middle of the page there it says
7 that Mr. Childs' joined Georgia-Pacific in April
8 of '05. Do you see that?

9 A. No.

10 Q. Let me point it out to you.

11 A. Okay. It says it up here.

12 Q. Oh, okay. So it says up top he joined
13 in April '05. Now, if you look in the middle
14 paragraph Mr. Childs says...

15 A. Okay.

16 Q. Can you read what it says --

17 A. Yes.

18 Q. -- where it says my role?

19 A. Sure. "My role was to develop and
20 design an in-house defense to the asbestos
21 litigation."

22 MR. SCHNEIDER: Let me just note
23 this objection for the record.
24 You're showing him a page on the
25 computer which I guess is something

1 you pulled up from a Web site. Can
2 you give us the --

3 MR. KRISTAL: Sure, yeah.

4 MR. SCHNEIDER: -- Web site
5 address on the --

6 MR. KRISTAL: Well, I was gonna
7 have this printed out at some break
8 and marked as an exhibit --

9 MR. SCHNEIDER: Okay.

10 MR. KRISTAL: -- so you all can
11 have copies of it, but I'll be happy
12 to tell you where it's from now.
13 It's an article in something called
14 Corporate Counsel.

15 MR. SCHNEIDER: All right.

16 MR. KRISTAL: It's an ALM Web
17 site, law.com. The article is from
18 the Fulton County Daily Report, April
19 23, 2008.

20 MR. SCHNEIDER: All right.
21 You're gonna print out that page and
22 mark it at some appropriate point or
23 e-mail --

24 MR. KRISTAL: Someone will print
25 out the --

1 MR. SCHNEIDER: If you just -- if
2 you read that browser address it
3 probably would be helpful to us and
4 we'll have that on the record.

5 MR. KRISTAL: Okay. Well, this
6 is on a thumb drive.

7 MR. SCHNEIDER: Oh, it is. Okay.

8 MR. KRISTAL: And I tried to get
9 it printed this morning but I was
10 unsuccessful so...

11 MR. SCHNEIDER: All right.

12 MR. KRISTAL: We'll -- we'll get
13 it printed.

14 MR. SCHNEIDER: All right.
15 Understood.

16 BY MR. KRISTAL:

17 Q. Are you telling us that today is the
18 first time that you've heard that Mr. Childs'
19 role was to develop and design an in-house
20 defense to asbestos litigation?

21 MR. SCHNEIDER: Object to the
22 form of the question, and if the
23 question requires you to reveal
24 attorney/client communications, I
25 instruct you not to answer. But if

1 you have an understanding from some
2 other source, you can answer.

3 A. I didn't know that
4 was the sole reason he was joining
5 GP, no.

6 BY MR. KRISTAL:

7 Q. Well, nor does it say that was his sole
8 reason. But did you have an understanding
9 before reading this article that that was one of
10 his roles?

11 A. Yes.

12 Q. Okay. When did you first have that
13 understanding?

14 A. When he joined the company.

15 Q. Now, if you look at Exhibit 2, this is
16 a letter addressed to you at Georgia-Pacific
17 Corporation sent from the same location, right?

18 MR. SCHNEIDER: I think that's
19 Exhibit 1, is it not?

20 MR. KRISTAL: I'm sorry. Exhibit
21 1. Thank you very much.

22 BY MR. KRISTAL:

23 Q. Do you have Exhibit 1 in front of you?

24 A. I do.

25 Q. This says dear Mr. Holm. Quote, "This

1 letter confirms that you have been specially
2 employed by Georgia-Pacific Corporation, GP, to
3 perform expert consulting services in connection
4 with pending and anticipated litigation
5 concerning alleged exposure to asbestos, the
6 litigation," end quote. Do you see that opening
7 sentence?

8 A. I do.

9 Q. Okay. What did you understand
10 specially employed by Georgia-Pacific to mean
11 when you got this letter?

12 A. They have a specific function related
13 to asbestos research.

14 Q. Well, it doesn't say asbestos research.
15 It says asbestos litigation, right?

16 A. Yes.

17 Q. And the letter goes on and says, "As
18 GP's litigation consultant, you will continue to
19 be an agent of GP," end quote. So you were
20 acting in the capacity as a litigation
21 consultant for Georgia-Pacific with respect to
22 the research that was funded by Georgia-Pacific
23 and the articles that were published on which
24 you're going to be speaking today; is that
25 correct?

1 A. I'd agree with that.

2 Q. The letter continues, quote, "However,
3 your duties as litigation consultant are
4 separate and distinct from your duties as a
5 regular employee of Georgia-Pacific and your
6 work will be directed solely by GP's in-house
7 counsel," end quote. Do you see that sentence?

8 A. I do.

9 Q. Had you ever had any work at
10 Georgia-Pacific in the -- I guess at this point
11 it was about 15 years you were there -- where
12 you were being directed solely by
13 Georgia-Pacific's in-house counsel who you knew
14 had a role in the defense of asbestos
15 litigation?

16 A. Did I have a -- what was it -- the
17 question again?

18 MR. KRISTAL: Can you read back
19 the question, please.

20 (Record read.)

21 A. No. That was the first
22 time.

23 BY MR. KRISTAL:

24 Q. The letter continues, quote, "You will
25 report directly to GP's in-house counsel," end

1 quote. Had you ever reported directly on any
2 other assignment directly to GP's in-house
3 litigation counsel?

4 A. I'd probably say yes.

5 Q. Okay. When was that?

6 A. Well, that was with those three other
7 depositions.

8 Q. So the work that you were doing in
9 terms of any research on the CCA and ACQ-treated
10 lumber, you were reporting directly to GP's
11 counsel?

12 MR. SCHNEIDER: Object to the
13 form.

14 A. Yes, I was.

15 BY MR. KRISTAL:

16 Q. And the same with the particle board
17 litigation?

18 A. Like I said, there wasn't any research
19 associated with the particle board. It was just
20 a deposition.

21 Q. Then the letter has a section entitled
22 purpose. Do you see that?

23 A. Yes.

24 Q. And it says, quote, "You will assist
25 GP's in-house counsel in advising GP in

1 connection with the litigation," end quote. Had
2 you ever been involved before with asbestos
3 litigation?

4 A. No.

5 Q. Fair to say that in your career up
6 until this point of time you had really had no
7 specialty in asbestos? Is that fair to say?

8 A. In asbestos specifically, that's fair
9 to say.

10 Q. You had done no research in asbestos at
11 this point in time, August of 2005, correct?

12 A. That's correct.

13 Q. You had had no publications relating to
14 asbestos at that point in time?

15 A. That's also correct.

16 Q. You gave no presentations at any
17 meetings about asbestos?

18 A. I'd agree with that.

19 Q. The purpose section of Exhibit 1, the
20 August 22, 2005 letter, continues, quote, "Your
21 work as litigation consultant will involve
22 performing workplace simulation tests and
23 analyzing data from prior tests performed by
24 third parties," end quote. Do you see that?

25 A. I do see that.

1 Q. Did you perform any workplace
2 simulation tests from the time you got this
3 letter to the present date?

4 A. Yes.

5 Q. What workplace simulation tests did you
6 perform?

7 A. The -- we performed some workplace
8 simulation tests with asbestos-containing
9 material in chamber design and also in the
10 field.

11 Q. Well, what -- what is your
12 understanding of a workplace simulation test?

13 A. Well, we had -- we were in a warehouse
14 and we had expert people sanding joint compound
15 as well as non-expert people sanding joint
16 compound and we took industrial hygiene
17 measurements.

18 Q. And we'll talk about that in a little
19 while. Did that work result in any publication?

20 A. I don't -- yes, it has.

21 Q. What publication was that?

22 A. Can I -- this is --

23 Q. Anything you need to refer to --

24 A. Okay.

25 Q. -- at any time, just let me know --

1 A. All right.

2 Q. -- or just feel free to go ahead and
3 refer to it.

4 A. Okay.

5 Q. Just when you're referring to, if you
6 would identify what you're referring to.

7 A. All right. All right. The first one
8 is titled Factors Influencing Dust Exposure:
9 Finishing Activities in Drywall Construction.

10 Q. Can you tell me who the lead author is
11 and the year?

12 A. Yeah. It's Catherine Simmons and the
13 year is 2011.

14 Q. That's the Environ work?

15 A. That's correct.

16 Q. Okay. Any other publications from what
17 you just said in terms of workplace simulation
18 tests?

19 A. Oh... No.

20 Q. Now, Environ -- we're gonna get to
21 probably later today or some other day -- was a
22 consulting company that was hired by
23 Georgia-Pacific to be involved in this
24 litigation project, correct?

25 A. That's correct.

1 Q. And that study, if I'm recalling
2 correctly, didn't use asbestos-containing joint
3 compound, did it?

4 A. No, it did not.

5 Q. So the workplace simulation -- strike
6 that. Did any of the workplace simulation tests
7 as you have defined it in terms of your work on
8 this litigation project, did that involve
9 asbestos joint compound or joint compound
10 without asbestos?

11 MR. SCHNEIDER: Object to the
12 form. You can answer.

13 A. This publication
14 was on non-asbestos-containing joint
15 compound.

16 BY MR. KRISTAL:

17 Q. Okay. And I'm asking you if there was
18 any work that falls in the category of what
19 we're discussing, workplace simulation tests,
20 involved asbestos joint compound.

21 A. Yes.

22 Q. Did that result in a publication?

23 A. It resulted -- it's -- it's a
24 manuscript that's been accepted but it's not
25 been published at this point.

1 Q. And where has it been accepted? Let me
2 guess. Inhalation Toxicology?

3 A. No.

4 MR. SCHNEIDER: Object to the
5 form.

6 A. I don't have the -- we publish
7 in a lot of different journals so I
8 don't recall the exact name of that
9 journal right now.

10 BY MR. KRISTAL:

11 Q. Who was the lead author?

12 A. Pat Sheehan.

13 Q. So that's an Exponent study --

14 A. That's correct.

15 Q. -- is that fair to say?

16 A. Um-hum. He was the lead author.

17 Q. Just for Jennifer's purpose, if you
18 could just give us yeses and nos.

19 A. Sure.

20 Q. We all understood what you meant --

21 A. Yeah.

22 Q. -- but she has to actually --

23 A. I understand.

24 Q. -- write it down.

25 A. Um-hum. Yes.

1 Q. Any other publication arising out of
2 any workplace simulation tests with asbestos
3 joint compound, other than the manuscript whose
4 lead author is Sheehan, that is not out yet?

5 A. No.

6 Q. Was the joint compound used that is
7 being reported on, on the yet-to-be-published
8 Sheehan article, old original asbestos joint
9 compound or recreated joint compound?

10 A. Recreated joint compound.

11 Q. Did you do any workplace simulation
12 tests for this litigation project that involved
13 original Georgia-Pacific asbestos joint
14 compound?

15 A. Not workplace simulation per se, no.

16 Q. What kind of tests did you do?

17 A. We did some sized distribution studies
18 comparing historic joint compound to recreated
19 joint compound.

20 Q. And when you say size and distribution
21 studies, were you looking at old Georgia-Pacific
22 asbestos joint compound that had been applied
23 and sanded and then looked at the sanded
24 material to look at the size and distribution?

25 A. Yes.

1 Q. When -- strike that. How many such
2 studies were there that involved old
3 Georgia-Pacific asbestos joint compound?

4 A. One.

5 Q. Has that resulted in a publication?

6 A. No.

7 Q. Why not?

8 A. It's -- it's been submitted and we have
9 comments back but it hasn't been accepted or
10 published at this point in time.

11 Q. So it's a manuscript that's been
12 prepared?

13 A. That's correct.

14 Q. Who was the lead author on that?

15 A. Wayne Berman.

16 Q. Wayne Berman? Is that the article that
17 you referenced in the 2008 recreation article as
18 having been in preparation as of 2008?

19 A. I believe so.

20 Q. So this article that you actually gave
21 a title to in the 2008 paper still has not been
22 published yet?

23 A. That's correct.

24 Q. Any other tests on Georgia-Pacific
25 asbestos joint compound?

1 MR. SCHNEIDER: Object to the
2 form.

3 BY MR. KRISTAL:

4 Q. Let me rephrase it.

5 A. Yeah.

6 Q. Did you perform any other what you
7 would consider workplace simulation tests or
8 tests such as the one involving the size and
9 distribution study involving old Georgia-Pacific
10 asbestos joint compound?

11 A. That would be all.

12 Q. What workplace simulation tests in the
13 field did you do pursuant to this litigation
14 research?

15 A. Pursuant to what litigation research?

16 Q. The litigation research that is
17 referenced in the August 22, 2005 letter,
18 Exhibit 1.

19 A. I hadn't done any before that time.

20 Q. No, no. I'm talking about pursuant to
21 your assignment in August 22, 2005.

22 A. Can you reask the question?

23 Q. Okay. When I asked you what workplace
24 simulation tests, I believe you divided your
25 answer into two things, chamber design studies

1 and studies in the field. Did you say that?

2 A. Well, there is one other.

3 Q. First of all, did you say chamber
4 design studies and studies in the field?

5 A. Well, I inferred there was more than
6 that, but that could have been the only thing I
7 said.

8 Q. When you use the word field in response
9 to my question about workplace simulation tests,
10 what are you talking about?

11 A. The field tests were in the warehouse
12 and there was a polyethylene chamber, if you
13 will, and the studies were conducted in that
14 location. That's the field.

15 Q. Okay. So you weren't actually in the
16 field. You were in somebody's lab somewhere.

17 A. No. We were in a warehouse.

18 Q. You were in a warehouse somewhere and
19 you set up a test chamber --

20 A. Yes.

21 Q. -- and you did some studies.

22 A. We did some industrial hygiene
23 measurements -- some sanding and then industrial
24 hygiene measurements, yes.

25 Q. And that's what you were talking about

1 in terms of the Sheehan manuscript?

2 A. No.

3 Q. No. What is that?

4 A. What is what?

5 Q. I'm trying to find out what you're
6 talking about in terms of what the study in this
7 warehouse was.

8 A. The warehouse was The Factors
9 Influencing Dust Exposure: Finishing Activities
10 In Drywall Construction.

11 Q. That's the Simmons study.

12 A. That's correct.

13 Q. Okay. Were there ever any field
14 studies involving asbestos joint compound other
15 than the Sheehan manuscript that's been accepted
16 and hasn't been published?

17 A. The Sheehan manuscript wasn't in the
18 field.

19 Q. Okay. What was that?

20 A. That was data from the chamber.

21 Q. What's the difference between the
22 chamber and the field?

23 A. The field was a chamber that was in a
24 warehouse.

25 Q. Right.

1 A. The Sheehan paper was a chamber that
2 was specifically designed to look at joint
3 compound and asbestos fibers. They're two
4 different chambers.

5 Q. Okay. And where was the chamber that
6 was especially designed to look at asbestos
7 fibers housed?

8 A. Outside of Oakland. I can't recall the
9 exact town.

10 Q. In a warehouse?

11 A. Yes.

12 Q. So these are both chambers in
13 warehouses, is that fair to say?

14 A. That's fair to say.

15 Q. Okay. Who specially designed the
16 chamber that resulted in the Sheehan paper
17 that's been accepted but not published yet on
18 asbestos joint compound?

19 A. Oh, it was a combination of people but
20 mainly myself and Pat Sheehan, Greg Brorby and
21 Wayne Berman.

22 Q. Okay. Now, Pat Sheehan and Greg Brorby
23 are both with Exponent, right?

24 A. They are.

25 Q. And Wayne Berman has his own consulting

1 company, correct?

2 A. He does.

3 Q. He was subcontracted by Exponent
4 pursuant to Exponent's contract with
5 Georgia-Pacific for this litigation research,
6 right?

7 A. I'd agree with that.

8 Q. Is Berman a coauthor on the Exponent
9 manuscript that's been accepted but hasn't been
10 published yet, the one that Sheehan is the lead
11 author on?

12 MR. SCHNEIDER: Object to the
13 form.

14 A. I'm pretty sure he is,
15 yes.

16 BY MR. KRISTAL:

17 Q. Are you?

18 A. Yes.

19 Q. And you were also a coauthor on the
20 study that has been in preparation where Berman
21 is the lead author, since 2008, right?

22 A. That's correct.

23 Q. Are there any other studies that were
24 performed that fall in the category of workplace
25 simulation tests that are mentioned in the

1 August 22, 2005 letter?

2 A. No.

3 Q. Did you analyze data from prior tests
4 performed by third parties as the letter
5 indicates you'd be involved in? It's the last
6 sentence of the purpose section.

7 A. In the re --

8 Q. It was the last sentence --

9 A. -- that was written --

10 Q. -- in the purpose section. Let me
11 re-read it. It says, "Your work as litigation
12 consultant will involve performing workplace
13 simulation tests and analyzing data from prior
14 tests performed by third parties."

15 A. Yes.

16 Q. So you were involved in that.

17 A. I was.

18 Q. Okay. Give me the list of third-party
19 data that you were involved in analyzing
20 pursuant to this litigation research assignment.

21 MR. SCHNEIDER: That's referenced
22 in Exhibit 1.

23 MR. KRISTAL: Excuse me?

24 MR. SCHNEIDER: That's referenced
25 in Exhibit 1.

1 MR. KRISTAL: Well -- or any
2 other one.

3 A. How I would define that is
4 that's data that's in the literature on
5 analyzing data in terms of industrial hygiene
6 information.

7 BY MR. KRISTAL:

8 Q. Right. So tell me which ones you
9 analyzed.

10 A. Verma, Middleton, Fishbein --

11 Q. We have somebody who needs to write
12 down. Verma and Middleton.

13 A. Um-hum.

14 Q. Okay. Fishbein.

15 A. Yeah.

16 Q. Anybody else?

17 A. Yeah. There's a couple others. I
18 could probably refer to that if you don't --

19 Q. Anything -- again, you don't have to
20 ask.

21 A. Okay.

22 Q. Just go to it and just tell us what
23 you're referring when you do it. Is that okay?

24 A. Sure. Rhodes and Engels and Rohl, et
25 al.

1 Q. R-o-h-l, Rohl?

2 A. That's correct.

3 Q. Are there any other third-party tests
4 that had been performed whose data you've
5 analyzed pursuant to this assignment?

6 A. No.

7 Q. Did anyone other than yourself assist
8 in the analysis of this third-party data?

9 A. Yes.

10 Q. Who was that?

11 A. Well, that would be the team that was
12 authors on the paper so that would include, you
13 know, Brorby, Sheehan, Berman, Jessica Greene
14 and myself.

15 Q. So this is an Exponent group and
16 yourself?

17 A. Other than Wayne Berman, right.

18 Q. Well, he was subcontracted --

19 A. Sure.

20 Q. -- by Exponent for this project, right?

21 A. That's correct.

22 Q. And what publication are you referring
23 to now?

24 A. This is -- the one I was looking at
25 here is the Recreation of Historical

1 Chrysotile-Containing Joint Compounds.

2 Q. So the 2008 article?

3 A. The 200 -- yeah, it's from 2008.

4 Q. Tell me exactly what you're looking at
5 in front of you there.

6 A. It's a 2008 article from Inhalation
7 Toxicology entitled Recreation of Historical
8 Chrysotile-Containing Joint Compounds.

9 Q. And that's the one where Brorby is the
10 lead author?

11 A. That's correct.

12 Q. And that's the one that references the
13 Berman paper that has not yet published as
14 having been in preparation at that point in
15 time?

16 A. Yes.

17 Q. Other than the analyses of the
18 third-party data that's contained in that
19 article, were you involved in analyzing any
20 other third-party data pursuant to this
21 litigation research assignment?

22 A. No.

23 Q. Did you -- well, strike that. We'll
24 come back to that. Referring again to Exhibit
25 1, there's a section called work product. Do

1 you see that?

2 A. I do.

3 Q. It says, "In connection with your work,
4 you may be asked to prepare a detailed written
5 report setting forth your findings as well as
6 the basis for any conclusions you have reached
7 in the course of your work on this matter," end
8 quote. Were you asked to do that?

9 A. I did [sic].

10 Q. And how many detailed written reports
11 setting forth your findings have you prepared?

12 A. Two to four. I'm not sure of the exact
13 amount.

14 Q. Were there any other authors of these
15 reports other than yourself?

16 A. Well, there -- the ones I'm referring
17 to are internal reports. They would contain
18 information from --

19 MR. SCHNEIDER: Let me -- let me
20 stop you and instruct you that to the
21 extent you are discussing internal
22 reports that you submitted to counsel
23 or that related to your work with
24 counsel, I instruct you not to
25 describe the contents of the

1 document. You can note that you had
2 them, when you created them but don't
3 describe the contents of them as we
4 claim privilege or work product with
5 respect to the content of any such
6 materials.

7 THE WITNESS: Okay.

8 BY MR. KRISTAL:

9 Q. My question was were there any other
10 authors -- strike that. Let's move back. I
11 appreciate the reports we're talking about now
12 were internal Georgia-Pacific reports. Is that
13 correct?

14 A. That's correct.

15 Q. They were not submitted or prepared for
16 publication purposes, correct?

17 A. Not with what I'm referring to, no.

18 Q. Okay. And what I'm asking you now is
19 were there any other authors of these internal
20 reports other than yourself?

21 A. No, there were not.

22 Q. Did you share any drafts of the
23 internal reports with any of the consultants
24 that had been hired for this litigation research
25 project?

1 A. No.

2 Q. Did you share them with anyone else --
3 strike that. I'm assuming these reports went to
4 Mr. Childs?

5 A. Yes, they did.

6 Q. Did you share any drafts of the reports
7 before you submitted them to Mr. Childs to --
8 with anyone?

9 A. No.

10 MR. KRISTAL: I'd request all
11 these reports. I understand your
12 position.

13 MR. SCHNEIDER: And -- but
14 anything that we've located in our
15 files that, you know, we collected
16 before April 2011 should be on the
17 log so...

18 MR. KRISTAL: Okay. I'm just --
19 as we go along, I'm going to be
20 making requests and you can state
21 whatever your position is and we move
22 on to the next question.

23 BY MR. KRISTAL:

24 Q. The work product section of the August
25 22, 2005 letter continues, quote, "All notes,

1 memoranda, reports and other documents generated
2 by you should be clearly marked as follows:" In
3 all capital letters "privileged and
4 confidential. Prepared at direction of counsel
5 in anticipation of litigation. You agree not to
6 prepare any written report unless you are
7 specifically requested to do so by GP's in-house
8 counsel," end quote. Did you follow the first
9 direction there in terms of marking all notes,
10 memorandum, that you had with those markings?

11 A. Yes, I did.

12 Q. And did you follow the second
13 direction, not to prepare any written reports
14 unless specifically requested to do so by GP's
15 in-house counsel?

16 A. That is correct.

17 Q. Was it your understanding that reports
18 were to be generated at certain time frames or
19 did you literally specifically wait for a
20 request to write a report?

21 A. It was basically a request for a
22 report.

23 Q. And the two to four reports that you
24 referenced earlier were ones that you prepared
25 in response to that specific request by counsel?

1 A. That's correct.

2 Q. Under the section of the August 22,
3 2005 letter that says documents, it says, quote,
4 "All documents including work papers produced or
5 obtained by you during this engagement shall be
6 the sole property of GP and upon its request
7 shall be turned over to GP who shall be entitled
8 to deal with such documents as it deems
9 appropriate. You agree not to photocopy,
10 reproduce or create digital images of any such
11 documents without the expressed permission of
12 GP." Did you follow those instructions?

13 A. I did.

14 Q. Would you agree this was a top secret
15 project?

16 MR. SCHNEIDER: Object to the
17 form.

18 A. No, I wouldn't agree with
19 that.

20 BY MR. KRISTAL:

21 Q. Okay. Let's look at the next page.
22 Under confidentiality the letter says, quote,
23 "You agree to maintain the confidentiality of
24 all notes, memoranda, reports, results,
25 opinions, theories, conclusions, statements,

1 documents and other information generated by you
2 in connection with your work; collectively, the
3 confidential information," end quote. So
4 anything and everything that you did on this
5 project you had to keep confidential, correct?

6 A. That's correct.

7 Q. And is confidential different in your
8 mind than secret?

9 A. No.

10 Q. It says, quote, "The confidential
11 information shall be held in the strictest
12 confidence and shall not be reproduced,
13 disclosed or divulged directly or indirectly to
14 any third party or otherwise used in any manner
15 not within the contemplation of this engagement
16 without the expressed permission of GP," end
17 quote. So the -- do you see that?

18 A. Yes, I do.

19 Q. And did you do that?

20 A. Yes, I did.

21 Q. So isn't this a secret project?

22 MR. SCHNEIDER: Object to the
23 form.

24 A. The information
25 derived from the project was secret

1 but people certainly knew that I was
2 doing it.

3 BY MR. KRISTAL:

4 Q. Oh, okay. So the fact of the project
5 was known but the information generated from the
6 project was secret.

7 A. That is correct.

8 MR. SCHNEIDER: Object to the
9 form.

10 BY MR. KRISTAL:

11 Q. It goes on, quote, "Further" -- well,
12 strike that. When it says here that you are not
13 to reproduce, disclose, et cetera, in any manner
14 not within the contemplation of this
15 agreement -- do you see that?

16 A. Um-hum.

17 Q. Is that a yes?

18 A. Yes. Sorry.

19 Q. -- what did you understand the within
20 the contemplation of this engagement to mean?

21 A. As part of the litigation within the
22 context of this letter.

23 Q. The letter continues, quote, "Further
24 you may not disclose the confidential
25 information to any GP employee except GP's

1 in-house counsel without the expressed
2 permission of GP." Do you see that?

3 A. I do.

4 Q. So other than Georgia-Pacific's chief
5 litigation counsel, you were prohibited from
6 sharing any of the information from this project
7 with any other Georgia-Pacific employee as well,
8 right?

9 MR. SCHNEIDER: Object to the
10 form.

11 A. I'd agree with that
12 statement.

13 BY MR. KRISTAL:

14 Q. Did you maintain that confidence?

15 A. Yes.

16 Q. The letter continues, quote, "You agree
17 to store all confidential information in a
18 separate file away from other documents and
19 records you keep in connection with your regular
20 duties as a GP employee," end quote. Do you see
21 that?

22 A. I do.

23 Q. Did you do that?

24 A. I did.

25 Q. Can you tell me the volume of the

1 information that you maintained in separate
2 files from other documents that you maintain in
3 your regular duties as a GP employee?

4 A. It's difficult to tell since most of
5 it's electronic. So paper copies, there's
6 probably four to eight file cabinet -- cabinets
7 and as part of electronic files, it's -- there's
8 a lot of information there.

9 Q. Do you -- in terms of the electronic
10 information that you're talking about, is that
11 maintained on a separate computer or a separate
12 hard drive segregated from your information on
13 computer pursuant to your regular duties at
14 Georgia-Pacific?

15 A. No.

16 Q. So whatever computer you have, the
17 information for this particular project is
18 stored on that computer?

19 A. Yes.

20 Q. The file cabinets that you're talking
21 about with hard copies, are these four-drawer
22 file cabinets, six drawer? How tall are they?

23 A. Well, they're -- there's boxes around
24 my office and there's file cabinets so they're
25 in -- they're in a separate office from my

1 regular office so there are different shapes and
2 forms. Like I said, I -- there'd probably be
3 about six file cabinets full.

4 Q. Who has access to that separate office
5 other than yourself?

6 A. No one.

7 Q. The next section of the letter is
8 entitled conflicts of interest; no prior
9 knowledge. Do you see that section?

10 A. I do.

11 Q. Now, conflicts of interest are
12 important to disclose, are they not?

13 MR. SCHNEIDER: Object to the
14 form.

15 A. Yes.

16 BY MR. KRISTAL:

17 Q. And you're required under the terms of
18 this letter to actually confirm with your own
19 employee -- your own employer who you have been
20 employed with for 15 years that you didn't have
21 any conflict of interest with this litigation
22 research project, right?

23 A. That's correct.

24 Q. And it says here, quote, "By signing
25 this letter, you confirm the following: One, you

1 are not aware of any actual or potential
2 conflicts of interest which may compromise your
3 work on this matter. Two, you have had no prior
4 involvement in any asbestos related matter
5 during your employment at GP; and, three, you have
6 no knowledge of any work performed by any other
7 GP employee in connection with any asbestos-
8 related matter," end quote. Do you see that?

9 A. I do.

10 Q. Did you think that was odd?

11 A. No.

12 Q. You didn't think it was odd that you
13 were getting a letter that you had to confirm
14 that you had no conflicts of interest with an
15 assignment you were being given?

16 A. I hadn't thought about it at that point
17 as being odd, no.

18 Q. Did you ask anybody why it was you had
19 to confirm that you had no prior involvement in
20 any asbestos-related matter during your
21 employment at GP?

22 A. I didn't.

23 Q. Did you ask anyone why you had to
24 confirm that you had no knowledge of any work
25 performed by any other GP employee in connection

1 with any asbestos-related matter?

2 A. I didn't ask that question either, no.

3 Q. In your employment at GP with respect
4 to your regular duties up through the time you
5 received this letter, did you have any work at
6 all related to asbestos litigation?

7 A. No.

8 MR. SCHNEIDER: Object to the
9 form.

10 A. No, I didn't.

11 BY MR. KRISTAL:

12 Q. You had no prior involvement in
13 asbestos litigation before you got this letter?

14 MR. SCHNEIDER: Object to the
15 form.

16 A. No.

17 BY MR. KRISTAL:

18 Q. And did you have any knowledge of any
19 work performed by any other Georgia-Pacific
20 employee in connection with any asbestos related
21 matter before you got this letter?

22 A. Any work or... I --

23 Q. The letter says you had to confirm
24 that, quote, "You had no knowledge of any work
25 performed by any other GP employee in connection

1 with any asbestos-related matter," end quote.
 2 And I'm asking you if you had any knowledge of
 3 any work performed by any other GP employee in
 4 connection with any asbestos-related matter
 5 before you got this letter.

6 A. I knew the lawyers were engaged in
 7 litigation. That's -- I did know that, yes.

8 Q. Had you ever spoken to the lawyers
 9 about the litigation -- about asbestos
 10 litigation before this letter?

11 A. No.

12 Q. Is it fair to say that this letter did
 13 not arrive on your desk out of the blue?

14 MR. SCHNEIDER: Object to the
 15 form.

16 A. Well, the letter actually did,
 17 yes.

18 BY MR. KRISTAL:

19 Q. Well, were you aware prior to opening
 20 the envelope and laying your eyes on the letter
 21 that you were being considered for this
 22 litigation research project?

23 A. I did know that.

24 Q. Okay. And how did you know that?

25 A. I had spoken with John Childs.

1 Q. When prior to receiving the August 2005
2 letter had you first spoken to Mr. Childs about
3 this assignment?

4 A. I don't recall at this date.

5 Q. I mean the day before, a couple of
6 months before?

7 A. I really don't remember.

8 Q. Do you have any notes that would
9 reflect that?

10 A. Probably not.

11 Q. Well, are you saying you had a --
12 strike that.

13 How many meetings did you have with
14 Mr. Childs before you received this letter in
15 August of 2005?

16 A. I don't recall at this point.

17 Q. When you had your meetings with
18 Mr. Childs, was it in person?

19 A. Yes.

20 Q. Were there ever any meetings you had
21 with him before August 2005 that were not in
22 person?

23 MR. SCHNEIDER: Object to the
24 form.

25 BY MR. KRISTAL:

1 Q. About this project.

2 A. There could have been. On the phone
3 you mean or...

4 Q. Yeah. Teleconference, phone
5 conference.

6 A. I just don't remember what form the
7 meetings were or how many there were.

8 Q. Who other than you and Mr. Childs were
9 at any of these meetings before you got the
10 August 2005 letter?

11 A. There was -- probably Mary McLemore was
12 probably there, a possibility that Joel Mercer
13 was there.

14 Q. Anyone else?

15 A. Ken Khoury.

16 Q. Ken Khoury?

17 A. Um-hum.

18 Q. Can you spell that?

19 A. K-h-o-u-r-y. And then there was I
20 think one meeting with some senior people, my
21 CEO and COO, CFO.

22 Q. And who were they at the time? Who was
23 the CEO?

24 A. Now I'm going to forget his name.

25 Q. You're fired.

1 A. He was my CEO. Well, my COO was Lee
2 Thomas. CFO, I can't remember his name either.
3 Pete Correll was my CEO at the time.

4 Q. Pete Correll?

5 A. Yeah.

6 Q. Were all of the people you mentioned,
7 Ms. McLemore, Mr. Mercer, Mr. Khoury, the CEO,
8 the COO and the CFO all present at at least one
9 meeting prior to August 25, 2005, with you and
10 Mr. Childs?

11 A. Yes.

12 Q. Now, Ms. McLemore, Mr. Mercer and Mr.
13 Khoury, are they in the Georgia-Pacific
14 litigation department?

15 A. Well, they either are or were.

16 Q. Right. I'm talking about at the
17 time --

18 A. Yes.

19 Q. -- before you received this letter.

20 A. Yes.

21 Q. Are they all lawyers?

22 A. Yes.

23 Q. Were they all working on asbestos
24 litigation defense at that time?

25 A. Yes.

1 Q. Were there any lawyers present at any
2 of the meetings you had before you got the
3 August 2005 letter that were -- such as Mr.
4 Schneider or Mr. Emery here who were outside
5 lawyers retained by Georgia-Pacific to work on
6 asbestos litigation?

7 A. I don't recall ever having there be
8 outside counsel before that point in time.

9 Q. Now, did you -- well, strike that. Are
10 you saying at these meetings before August 2005
11 you took no notes?

12 A. I -- I had a couple of presentations.

13 Q. When you say you had, did you mean you
14 presented or somebody else presented and you had
15 a copy of their presentation or perhaps both?

16 A. I assembled my own presentation and
17 presented it.

18 Q. Like a PowerPoint or a PowerPoint. Not
19 like a PowerPoint.

20 A. Yes.

21 Q. How many PowerPoint presentations in
22 terms of different PowerPoint presentations did
23 you assemble to present to this group?

24 A. Well, it was, you know, different
25 groups at different times but they all included

1 those people. Three, I suppose.

2 Q. Can you describe the three different
3 presentations in terms of subject matter?

4 MR. SCHNEIDER: I'm going to
5 instruct you, Mr. Holm, not to reveal
6 the content of any such presentation
7 because we have made claims of
8 attorney/client privilege and work
9 product that the company has so you
10 are not to reveal the content. If
11 are able to describe the general
12 subject matter without revealing the
13 content of the presentation, you can
14 do that.

15 A. Okay. They were on asbestos
16 toxicology and industrial hygiene
17 measurements.

18 BY MR. KRISTAL:

19 Q. Are you saying that all three
20 presentations were on asbestos toxicology and
21 industrial hygiene measurements or there was one
22 presentation on asbestos toxicology and a
23 separate presentation on industrial hygiene
24 measurements?

25 A. They were combined.

1 Q. So all three presentations combined
2 both asbestos toxicology and industrial hygiene
3 measurements?

4 A. In some form or other, right.

5 Q. Okay.

6 A. Right.

7 Q. Okay. Who did you consult with to
8 generate these PowerPoint presentations?

9 A. At that point in time, no one.

10 Q. How long had you taken to do research
11 on these subjects in order to develop your
12 PowerPoint presentation?

13 A. Probably looked into it from six months
14 to a year.

15 Q. What led you six months to a year
16 prior to receiving this August 2005 letter to
17 start preparing these asbestos toxicology and
18 industrial hygiene measurement PowerPoints?

19 MR. SCHNEIDER: Object to the
20 form.

21 A. I was asked if there was a
22 way I could examine if our product was
23 causing disease.

24 BY MR. KRISTAL:

25 Q. When you say our product, you're

1 talking about asbestos joint compound that had
2 previously been manufactured and sold by
3 Georgia-Pacific?

4 A. That's what I'm talking about, yes.

5 Q. And you know that had been banned as of
6 January 1978 by the Consumer Product Safety
7 Commission, correct?

8 A. I do understand that.

9 Q. So your assignment six months to a year
10 before you got the August 2005 letter was to try
11 to look at ways to look at the health and safety
12 implications of exposure to the asbestos joint
13 compound that hadn't been around for 30 years or
14 so, right?

15 MR. SCHNEIDER: I'm going to
16 object to the question and instruct,
17 Mr. Holm, that you should not reveal
18 the content of any attorney/client
19 communication or request by counsel
20 directed to you related to the
21 litigation. And if you can describe
22 your activity without doing so then
23 let us know, but if you can't, also
24 let us know that.

25 THE WITNESS: It was all

1 attorney/client privileged.

2 MR. SCHNEIDER: Then I would
3 instruct you not to answer that
4 question.

5 THE WITNESS: Okay.

6 BY MR. KRISTAL:

7 Q. Tell me the process where you by --
8 whereby you learned information as to whether or
9 not the Georgia-Pacific asbestos joint compound
10 was causing disease.

11 MR. SCHNEIDER: I'm going to
12 instruct Mr. Holm not to answer that
13 question which inquires into what
14 activities he pursued in order to
15 explore litigation defense matters.

16 BY MR. KRISTAL:

17 Q. Just so you understand -- I imagine
18 you've been told this but again that I guess
19 would be privileged as well or there would be a
20 claim of privilege, let's put it that way. If
21 Mr. Schneider makes the kind of objection he
22 just made, I'm going to go on to another
23 question --

24 A. Okay.

25 Q. -- because I assume when he instructs

1 you not to answer you're going to follow his
2 instruction. Is that fair to say? So I don't
3 have to keep asking you are you going to follow
4 his instruction.

5 A. That's fair to say.

6 Q. Okay.

7 MR. SCHNEIDER: As a --

8 MR. KRISTAL: Is that okay in
9 terms of preserving --

10 MR. SCHNEIDER: That's -- yes --

11 MR. KRISTAL: -- privilege and
12 teeing up the issue because otherwise
13 we have to ask these kind of silly
14 questions.

15 MR. SCHNEIDER: I totally agree.
16 Whenever I give the instruction, he
17 is going to follow it. We don't have
18 to go through that, No. 1.

19 MR. KRISTAL: Fair enough.

20 MR. SCHNEIDER: No. 2, to
21 facilitate this I'm not
22 instructing -- I'm not instructing
23 him to give absolutely no details
24 about the work that he did. If he
25 looked at -- if he went -- he can

1 describe very generally --

2 MR. KRISTAL: That's fine.

3 MR. SCHNEIDER: -- without the
4 specifics --

5 MR. KRISTAL: Right. Okay.

6 MR. SCHNEIDER: -- then let's see
7 if we can do that.

8 MR. KRISTAL: Then let's back up.

9 BY MR. KRISTAL:

10 Q. Could you tell us very generally what
11 you actually did in order to familiarize
12 yourself with asbestos toxicology to prepare the
13 PowerPoints that you did prior to the August
14 2005 letter?

15 A. I reviewed scientific literature that's
16 available in journals.

17 Q. Anything else?

18 A. No.

19 Q. Were any -- strike that. Was any
20 scientific literature provided to you by
21 anybody?

22 A. Yes.

23 Q. Could you tell me a list of people or
24 entities that provided you with scientific
25 literature pursuant to this PowerPoint

1 development?

2 A. Yeah. I can tell you the group.

3 Q. Okay.

4 A. It was Spriggs & Hollingsworth.

5 Q. Anybody else?

6 A. Not at that time, no.

7 Q. Okay. So when you say not at that
8 time, what I'm referencing now, the time frame
9 is the six months to a year prior to August 2005
10 where you were working on the development of
11 these PowerPoints. That's what I'm talking
12 about.

13 A. Okay. Then no.

14 Q. Okay. So other than Spriggs &
15 Hollingsworth, during that period of time nobody
16 else provided you with any literature.

17 A. Right.

18 Q. Did you go down to Spriggs &
19 Hollingsworth in DC?

20 A. No. They -- I did at one point but it
21 was after 2005 --

22 Q. Okay.

23 A. -- around that time --

24 Q. We may talk about that later.

25 A. It might have been around that time

1 frame.

2 Q. Tell me what you physically did at
3 Spriggs & Hollingsworth when you went there to
4 DC.

5 A. I talked to them about the pros and
6 cons --

7 MR. SCHNEIDER: Mr. Holm, I'd
8 instruct you that discussions that
9 you had with counsel and the content
10 of those discussions are protected by
11 the attorney/client privilege. You
12 can describe your activities very
13 generally. As you have said, you've
14 looked at literature. But in terms
15 of what your discussions were --

16 THE WITNESS: Right.

17 MR. SCHNEIDER: -- with the
18 company then I instruct you not to
19 provide those details. We've claimed
20 a privilege, work product with
21 respect to that.

22 THE WITNESS: Sure. Sure. I had
23 a discussion with them about the
24 literature I had reviewed.

25 BY MR. KRISTAL:

1 Q. So if I'm understanding the process,
2 you did some research on your own, looked at
3 some literature and then arranged to meet with
4 them to discuss the literature you had obtained
5 yourself?

6 A. Well, it was a combination. It was
7 literature that I obtained myself and literature
8 that was in specific binders that was supplied
9 by Spriggs & Hollingsworth.

10 Q. And I assume the materials that you
11 found yourself as well as the Spriggs &
12 Hollingsworth binders that were provided to you
13 are somewhere in those file cabinets?

14 A. Yes. Either in the file cabinets or on
15 my computer.

16 MR. KRISTAL: We'd request that
17 information as well.

18 BY MR. KRISTAL:

19 Q. Were the binders broken down by
20 categories of articles?

21 A. Yes, they were.

22 Q. How many binders were there?

23 A. Seven or eight.

24 Q. What were the categories?

25 A. I don't recall the names of all the

1 categories at this point.

2 Q. I'm assuming the binders have on them a
3 title with the categories that would be in
4 there?

5 A. Yes, they do.

6 MR. SCHNEIDER: And I would note,
7 Jerry, that you just said you
8 requested the binders of articles
9 shared between counsel and Mr. Holm,
10 and just for the record, that would be
11 classic work product information and
12 we would object to that request but
13 just for -- to note on the record.

14 MR. KRISTAL: And just so the
15 record's clear, this at least in my
16 mind is not the form for us to be
17 debating the privilege issue.
18 Obviously it's going to be briefed
19 and is being briefed and is going to
20 be decided so my lack of response to
21 your classic attorney/client
22 privilege statement is certainly not
23 to be viewed by anyone as any sort of
24 agreement.

25 MR. SCHNEIDER: Understood.

1 BY MR. KRISTAL:

2 Q. Prior to your reading the asbestos
3 toxicology articles that you've read involved in
4 this PowerPoint presentation development
5 project, had you read asbestos literature
6 before?

7 A. Yes.

8 Q. When and what was the circumstance that
9 led you to read to asbestos literature prior to
10 that?

11 A. It was a minor amount and just
12 interest.

13 Q. So on occasion if you happened to look
14 at an article, you would take a look at it but
15 it was not with any sort of project in mind?

16 A. That's correct.

17 Q. Now, how long ago were you talking
18 about in terms of reading whatever asbestos
19 literature you read prior to this project?

20 A. Oh, there might be an article or two
21 once every other year.

22 Q. How did you physically go about looking
23 for articles? Where did you start?

24 A. Augmed and just general searches,
25 Google, et cetera.

1 Q. Did you have anyone assisting you?

2 A. No.

3 Q. What percent of your time prior to
4 receiving the August 2005 letter was devoted to
5 the project we're talking about?

6 A. Oh, maybe 10, 15 percent.

7 Q. When you visited Spriggs &
8 Hollingsworth did you have any understanding as
9 to whether they played any role in terms of
10 Georgia-Pacific asbestos litigation defense?

11 A. Yes.

12 Q. What was your understanding?

13 A. They were serving as outside counsel on
14 asbestos litigation.

15 Q. What lawyers from Spriggs &
16 Hollingsworth -- well, strike that. I'm
17 assuming there were lawyers at this meeting?

18 A. Yes.

19 Q. Which lawyers were there?

20 A. I don't recall. There was two lawyers
21 there and I don't remember their names.

22 Q. Bruce Berger?

23 A. Bruce was one.

24 Q. Kate Latimer?

25 A. No.

1 Q. Was Joe Hollingsworth there?

2 A. Not at that meeting.

3 Q. You had been at other meetings at
4 Spriggs & Hollingsworth where he was there?

5 A. I've met Joe. Not specifically in a
6 meeting.

7 Q. Did you share the PowerPoint
8 presentations with anyone before you presented
9 at these meetings that were attended by the
10 in-house counsel and the CEO, the COO and the
11 CFO?

12 MR. SCHNEIDER: Object to the
13 form.

14 A. No.

15 BY MR. KRISTAL:

16 Q. What was your understanding as to why
17 you were preparing these PowerPoints?

18 MR. SCHNEIDER: Mr. Holm, to the
19 extent that you received that
20 understanding through communications
21 with counsel, I instruct you not to
22 reveal those communications. To the
23 extent that you can describe your
24 understanding separate and apart from
25 your communications with counsel, you

1 can answer the question.

2 THE WITNESS: It was directly
3 related to counsel's request.

4 MR. SCHNEIDER: Then I instruct
5 you not to answer.

6 BY MR. KRISTAL:

7 Q. Exhibit 1, the letter ends by saying in
8 the conflict of interest section, quote, "In
9 addition, you agree that you will not consult
10 with or testify for any opposing party on this
11 or any other matter during the course of the
12 litigation unless required to do so by subpoena
13 and/or valid and enforceable court order," end
14 quote. And you agreed to do that, did you not?

15 A. I did agree.

16 Q. And you signed down at the bottom.
17 That's your signature there agreeing that you
18 were going to abide by the terms of the letter?

19 A. That's my signature, yes.

20 Q. Now, you would agree that this whole
21 project that you had now been specially employed
22 by Georgia-Pacific to undertake was for
23 litigation-driven research, correct?

24 MR. SCHNEIDER: Object to the
25 form.

1 A. Yes.

2 BY MR. KRISTAL:

3 Q. Did you assemble an in-house team of
4 any sort to assist you in this project?

5 A. No. I was the only in-house scientist
6 that was involved.

7 Q. Did the project have any sort of
8 mission statement?

9 A. No.

10 Q. Was your first assignment to assemble a
11 team of outside consultants?

12 A. No, it wasn't.

13 Q. What was your first assignment?

14 A. It was basically to continue to look at
15 the scientific literature in a more rigorous
16 fashion and make some conclusions on the
17 activities that would be proposed going forward.

18 Q. Did you prepare a proposal as to what
19 activities you thought should be undertaken
20 pursuant to this litigation-driven research?

21 A. I did.

22 Q. Did anyone assist you in that proposal?

23 A. No.

24 Q. Was there any part of the proposal that
25 discussed public disclosure of the results of

1 the studies that you were proposing?

2 A. Can you ask that one more time?

3 Q. Sure. I'm understanding you -- strike
4 that. Did you prepare a written proposal in
5 terms of outlining what you thought the
6 litigation-driven research projects moving
7 forward should be?

8 MR. SCHNEIDER: Object to the
9 form.

10 A. Yes, I did.

11 BY MR. KRISTAL:

12 Q. Did that include any sort of proposal
13 with respect to publication of the results of
14 any of the studies?

15 MR. SCHNEIDER: Mr. Holm, I would
16 instruct you that communications
17 between you and counsel concerning
18 work to be done in connection with
19 litigation is protected by the
20 attorney/client privilege and the
21 work product privilege that the
22 company has so claimed. I instruct
23 you not to reveal the details of that
24 activity; however, you can answer the
25 question of whether any of the work

1 that you did, it was contemplated
2 that it would be published.

3 MR. KRISTAL: Well, that's not
4 quite what I was asking so let me
5 make sure...

6 THE WITNESS: Okay.

7 BY MR. KRISTAL:

8 Q. In your proposal were you suggesting
9 that Georgia-Pacific commit to the publication
10 of the results of this litigation research
11 regardless of what the results were?

12 MR. SCHNEIDER: Since the
13 communication you're being inquired
14 about is a communication that took
15 place with respect to your work
16 product activities and
17 attorney/client privileged
18 activities, I instruct you not to
19 answer.

20 THE WITNESS: Okay.

21 BY MR. KRISTAL:

22 Q. How lengthy was this litigation-driven
23 research proposal?

24 A. About -- well, it was in two forms, a
25 written form, six to seven pages and then there

1 was a PowerPoint that was probably that length
2 also.

3 Q. The PowerPoint with the proposal for
4 the litigation-driven research is independent of
5 the PowerPoints we were talking about
6 earlier?

7 MR. SCHNEIDER: Object to the
8 form.

9 A. No. I mean one of the PowerPoints
10 was consistent with what I was talking
11 about earlier.

12 BY MR. KRISTAL:

13 Q. Okay. Now, I'm trying to figure this
14 out. The proposal PowerPoint which was around
15 six or seven pages, was that developed by you
16 before or after you received your special
17 employment litigation consultant assignment in
18 August of 2005?

19 MR. SCHNEIDER: Object to the
20 form.

21 A. That was afterwards.

22 BY MR. KRISTAL:

23 Q. Okay. Did that PowerPoint include the
24 asbestos toxicology and industrial hygiene
25 measurement slides from the previous PowerPoint

1 or was it a new independent PowerPoint?

2 A. There was -- I don't recall. There
3 might have been a few that were consistent but
4 the majority of them were based on more firm
5 review of the literature and more firm
6 understanding.

7 Q. To whom -- strike that. On how many
8 occasions did you present this litigation-driven
9 research proposal PowerPoint?

10 MR. SCHNEIDER: Object to the
11 form.

12 A. Probably twice.

13 BY MR. KRISTAL:

14 Q. And who was in attendance during these
15 meetings?

16 A. The first time it was just attorneys
17 and the second time it was attorneys plus some
18 of the senior management.

19 Q. The CEO was there?

20 A. Yes.

21 Q. The COO was there?

22 A. Yes.

23 Q. And the CFO was there?

24 A. Yes.

25 Q. Any other senior management?

1 A. General counsel.

2 Q. Approximately how long after you
3 received the August 2005 assignment letter did
4 you present this proposal PowerPoint?

5 A. I don't recall at this point in time.

6 Q. Had you at that point in time spoken
7 with any of the outside consultants who
8 eventually got hired for this litigation-driven
9 research project?

10 A. Yes.

11 Q. Who had you spoken with prior to your
12 PowerPoint presentation with your proposal?
13 David Bernstein?

14 A. Bernstein, yes, I had.

15 Q. Did you speak with anyone who was
16 employed by Exponent?

17 A. I imagine so. I was working with
18 Exponent on other projects as well so I'm not
19 quite sure of when I started talking to him
20 about asbestos litigation as opposed to other
21 activities.

22 Q. Did you speak with Fred Boelter?

23 A. Before --

24 Q. Yes.

25 A. -- this? No.

1 Q. Did you speak with Wayne Berman before
2 this?

3 A. No.

4 Q. Did you speak with Ken Donaldson before
5 this proposal PowerPoint?

6 A. Maybe. I'm not quite sure when I
7 talked to Ken the first time.

8 Q. Ken Donaldson's over in Scotland,
9 right?

10 A. He's at the University of Edinburgh.

11 Q. And he's a coauthor on some of the
12 studies that got published out of this
13 litigation-driven research, right?

14 A. That's correct.

15 Q. And he was also consulting with
16 Georgia-Pacific on this project, correct?

17 A. Yes.

18 Q. Did you consult with anybody else that
19 you can recall other than who you've already
20 mentioned?

21 MR. SCHNEIDER: You mean at the
22 time.

23 MR. KRISTAL: Okay. Let me focus
24 it then.

25 BY MR. KRISTAL:

1 Q. I'm only talking now about who you
2 consulted with in order to develop the
3 PowerPoint which was the proposal that you
4 presented to the two different groups, as you've
5 mentioned.

6 A. Um-hum. Um-hum.

7 Q. And I'm asking you --

8 A. Yes.

9 Q. -- who else did you consult with other
10 than Bernstein and Donaldson. Did you consult,
11 for example, with Deardorff?

12 A. I wouldn't think so.

13 Q. Why not?

14 A. He doesn't know anything about asbestos
15 toxicology.

16 Q. How about Festa, F-e-s-t-a?

17 A. No. He -- not on asbestos.

18 Q. As you sit here can you recall anybody
19 else you consulted?

20 A. I don't think I consulted with anybody
21 else. No.

22 Q. At the point in time when you presented
23 these proposals in the PowerPoint had
24 Georgia-Pacific retained any outside consultants
25 for this litigation-driven research project?

1 MR. SCHNEIDER: Object to the
2 form.

3 A. I don't believe so. I didn't know
4 of any.

5 BY MR. KRISTAL:

6 Q. Okay. When in time was it that you
7 first spoke to -- strike that. Let me back up.

8 When you spoke to Bernstein while you
9 were developing the proposal PowerPoint, did you
10 discuss with him hiring him to work on this
11 litigation-driven research?

12 A. Not at that point. It was an
13 information discussion.

14 Q. Did you fly over to Europe to speak
15 with him?

16 A. Not related specifically to asbestos.

17 Q. What did it relate to?

18 MR. SCHNEIDER: I would instruct
19 you that if your meeting with
20 Mr. Bernstein related to some
21 litigation-related activity or
22 litigation defense, the fact of those
23 consultations would be protected by a
24 work product privilege and a
25 privilege applicable to consulting

1 experts so if it did not, you can
2 answer.

3 A. It did not. It was on cellulose
4 research.

5 BY MR. KRISTAL:

6 Q. So when you went over to Europe you
7 were consulting with Bernstein about both the
8 asbestos research proposal and the cellulose
9 research?

10 MR. SCHNEIDER: Object to the
11 form.

12 THE WITNESS: It wasn't on
13 asbestos this research at that point
14 in time. It was a discussion on
15 asbestos but it was more oriented
16 around some work we were considering
17 doing on cellulose.

18 BY MR. KRISTAL:

19 Q. And is that why Deardorff was there?

20 A. Yes.

21 Q. He was with International Paper at the
22 time?

23 A. That's correct.

24 Q. He's now with Exponent.

25 A. Um-hum.

1 Q. Yes?

2 A. Yes.

3 Q. Did he do any work on the asbestos
4 project while he was with Exponent?

5 A. No.

6 Q. Was it at the meeting with Deardorff
7 and Bernstein in Europe where you were
8 discussing cellulose that you discussed with
9 Bernstein about the litigation-driven research
10 proposal for asbestos?

11 MR. SCHNEIDER: Object to the
12 form.

13 A. Well, No. 1, no.
14 There was two separate meetings.
15 There was one on cellulose and then
16 there was one on just a discussion of
17 asbestos.

18 MR. KRISTAL: Why don't we go off
19 the video record.

20 THE VIDEO OPERATOR: The time is
21 10:53 a.m. Going off the video
22 record.

23 (Whereupon, a break was taken.)

24 MR. KRISTAL: I'm officially
25 marking as Exhibit 2 the two-page

1 printout from the Web site that
2 Mr. Schneider was kind enough to have
3 one printed out for us.

4 MR. SCHNEIDER: That's what we
5 referred to as Exhibit 2 earlier.
6 What has now been marked as Exhibit 2
7 is now that reference.

8 MR. KRISTAL: Right.

9 (Exhibit 2 was marked for
10 identification.)

11 THE VIDEO OPERATOR: We are back
12 on the record with videotape No. 2.
13 The time is 11:04 a.m.

14 BY MR. KRISTAL:

15 Q. Mr. Holm, did you share any of the four
16 PowerPoints that we've been discussing thus far
17 at any time with anyone other than the people
18 whom you have already mentioned you had shared
19 them with?

20 A. No.

21 (Exhibit 3 was marked for
22 identification.)

23 BY MR. KRISTAL:

24 Q. I'm going to mark as Exhibit 3 a copy
25 of your curriculum vitae. The Bates number is

1 NYCAL -- strike that. NYCAL 206 through 2078.

2 I'm going to hand you a copy and ask you if that
3 is indeed your curriculum vitae.

4 A. It is.

5 Q. How current is this?

6 A. Pretty current. I think there's a
7 couple of presentations that I've done since
8 this point that I've put on here.

9 Q. And in the overview section of your
10 curriculum vitae, the first sentence reads,
11 quote, "Prior work and current expertise focuses
12 on planning and management of human and
13 environmental health investigations,
14 litigation-driven scientific testimony and
15 research, regulatory compliance and strategic
16 environmental and scientific consulting," end
17 quote. Do you see that sentence?

18 A. I do.

19 Q. And you were talking there about your
20 work at Georgia-Pacific, I'm assuming. Is that
21 correct?

22 A. Not -- not completely, no.

23 Q. Okay. Well, when you were talking
24 about litigation-driven scientific testimony and
25 research, is there any project other than the

1 asbestos litigation defense project we've been
2 discussing that falls in that category?

3 MR. SCHNEIDER: Object to the
4 form.

5 A. No.

6 BY MR. KRISTAL:

7 Q. Is it your -- strike that. Have you
8 testified before with respect to asbestos
9 litigation?

10 A. No, I have not.

11 Q. Do you expect to testify other than
12 today? I mean other than this deposition which
13 I'm sure is not going to end today but...

14 A. I -- there is other depositions I think
15 that are being suggested.

16 Q. Now, you have, as you note here, quote,
17 "Serves in leadership roles at several trade
18 associations and has provided expert testimony
19 related to toxicology and environmental
20 chemistry in various venues that include federal
21 regulators, state government, public hearings
22 and community groups," end quote. Do you see
23 that?

24 A. I do.

25 Q. Okay. What trade -- strike that. Do

1 you belong to any trade associations that
2 involve asbestos at all?

3 A. No.

4 Q. Have you ever heard of the Chrysotile
5 Institute?

6 A. I have.

7 Q. Have you ever attended any proceedings
8 of the Chrysotile Institute?

9 A. Proceedings, can you define that?

10 Q. Conferences.

11 A. Yes.

12 Q. Tell me when you've attended Chrysotile
13 Institute conferences.

14 A. I don't remember the exact time frame.
15 I think it was 2003, 2004 they had a conference
16 with a variety of speakers.

17 Q. Is that the one where Dennis
18 Paustenbach spoke?

19 A. I think so.

20 Q. Is that the one where David Bernstein
21 spoke?

22 A. Yes.

23 Q. Other than that meeting were those two
24 folks and other people spoke, did you attend any
25 other Chrysotile Institute meetings?

1 A. No.

2 Q. And did you have a copy of Dennis
3 Paustenbach's PowerPoint presentation that he
4 gave?

5 A. I don't believe so, no.

6 Q. It's available online if you want it.

7 A. Oh, okay.

8 Q. Did you ever have a written copy of his
9 presentation?

10 A. I don't remember one, no.

11 Q. Okay. And Dennis Paustenbach was
12 suggesting to the audience that companies that
13 were defendants in asbestos litigation try to
14 recreate their products and do studies, right?
15 That was one of the things he was suggesting,
16 right?

17 MR. SCHNEIDER: Object to the
18 form.

19 A. I don't remember what he presented
20 at that time.

21 BY MR. KRISTAL:

22 Q. When was the first time that you heard
23 about recreating products that hadn't been on
24 the market for over 30 years or close to 30
25 years?

1 A. I don't even recall the first time.
2 Probably 15 years ago, maybe longer.

3 Q. What was that context?

4 A. It was biphenyl and benzene exposure.

5 Q. That was with your work at
6 Georgia-Pacific?

7 A. Not directly related, no, just interest
8 in manuscripts and the scientific literature.

9 Q. Okay. So you had read some manuscript
10 about 15 years ago where the subject of
11 recreating a product that hadn't been on the
12 market for a while was mentioned?

13 A. It was described, yes.

14 Q. Why did you go to the Chrysotile
15 Institute meeting where Paustenbach and
16 Bernstein spoke?

17 A. Background information. I didn't know
18 much about the subject at that point in time and
19 I thought it would be useful.

20 Q. Did you think the Chrysotile Institute
21 was going to give you a balanced view?

22 A. I really didn't know anything about the
23 Chrysotile Institute at that point in time. I
24 did know some of the speakers that would be
25 there.

1 Q. And what was your understanding of --
2 what is your understanding of what the
3 Chrysotile Institute is other than a lobbying
4 group for the asbestos industry in Canada?

5 A. I don't really --

6 MR. SCHNEIDER: Let me object to
7 the question and note I don't think
8 this falls within the list of topics
9 in the notice of deposition but as
10 general background information I'll
11 allow him to answer the question. Go
12 ahead.

13 A. I don't really know much about the
14 Chrysotile Institute.

15 BY MR. KRISTAL:

16 Q. Well, how did you even find out there
17 was a meeting at the Chrysotile Institute where
18 Paustenbach and Bernstein were gonna be
19 speaking?

20 A. I don't remember.

21 Q. The conference you're talking about
22 where Paustenbach and Bernstein spoke was after
23 you had met with Bernstein, correct?

24 A. I don't remember when the meeting was.

25 Q. Well --

1 A. It could have been.

2 Q. This was 2006, was it not?

3 A. Like I said, I don't remember when it
4 was. I thought it was earlier than that but
5 perhaps not.

6 Q. Have you read any of the publications
7 put out by the Chrysotile Institute?

8 A. No.

9 Q. What was your -- what is your
10 understanding of what the Chrysotile Institute
11 is?

12 A. I really don't know much about them. I
13 have not participated in anything that they've
14 done. I know they have a Web site. That's
15 about all I know.

16 Q. Now, the Chrysotile Institute
17 conference you attended was where?

18 A. I think it was Montreal.

19 Q. Okay. So you flew up to Montreal to
20 attend this conference?

21 A. Yes.

22 Q. Was there anyone else from
23 Georgia-Pacific in attendance with you?

24 A. No.

25 Q. Were there any outside counsel of

1 Georgia-Pacific's involved in asbestos
2 litigation --

3 A. Not --

4 Q. -- at that conference?

5 A. -- that I know of.

6 Q. How did you get to go to this
7 conference? What -- how did you find out about
8 it? Who suggested you go?

9 A. I remember a flier. I don't know how I
10 got it, if it was e-mailed to me by someone.
11 That's all I remember at this point.

12 Q. Do you have any materials from that
13 conference?

14 A. I doubt it.

15 Q. Do you have any understanding that the
16 goal of the Chrysotile Institute is to sell
17 chrysotile asbestos to developing countries?

18 A. I don't know the goal of the Chrysotile
19 Institute.

20 Q. Do you know if Bernstein's publications
21 have been presented in Chrysotile Institute
22 newsletters?

23 A. I didn't -- I think there's some
24 reference to Bernstein's work. I didn't know if
25 it was the entire publication or not.

1 Q. And what references to Bernstein's work
2 have you seen put out by the Chrysotile
3 Institute?

4 A. I don't know anything directly. I just
5 recall that that was -- that they have been
6 there. In terms of their -- I've heard that
7 they're in the newsletter.

8 Q. Prior to hearing Dennis Paustenbach
9 speak, had you ever met with him?

10 A. I've known Dennis for a long time.

11 Q. And Dennis used to be at Exponent,
12 correct?

13 A. He did, yes.

14 Q. He was.

15 A. Right.

16 Q. And did you speak with Paustenbach at
17 this conference about the research project you
18 were involved in for litigation at
19 Georgia-Pacific?

20 A. I don't recall any conversation with
21 Dennis at the meeting. I imagine that I spoke
22 to him but I don't remember what it was
23 inferring to.

24 Q. At the time of the Chrysotile Institute
25 conference, Paustenbach was with a group called

1 ChemRisk. Did you understand that?

2 A. I didn't know when he left Exponent and
3 started up ChemRisk again.

4 Q. Okay. Was ChemRisk considered at all
5 for any component of this litigation-driven
6 research project?

7 A. No.

8 Q. Why not?

9 A. They provided a presentation and they
10 were out-competed by Exponent.

11 Q. So it was a matter of price?

12 A. I don't think there was any prices at
13 that point in time. It was design.

14 Q. When -- was it Paustenbach that
15 presented, I'm assuming, for ChemRisk?

16 A. I'm sure he presented some. It was
17 Paustenbach and two women.

18 Q. Do you remember who they were?

19 A. I think one was Amy Madl and I don't
20 remember the other woman.

21 Q. It's M-a-d-l?

22 A. Yes.

23 Q. Where -- strike that. Was there one or
24 more than one meeting with ChemRisk?

25 A. One that I remember.

1 Q. And where was the meeting? Out in
2 California?

3 A. No. It was in Denver.

4 Q. Where in Denver was the meeting with
5 ChemRisk?

6 A. It was at a law firm in downtown
7 Denver.

8 Q. Was it Wheeler, Trigg?

9 A. Yes.

10 Q. Who was present at the ChemRisk
11 presentation other than yourself, Paustenbach,
12 Amy Madl, some other person who shall remain
13 unnamed at ChemRisk?

14 A. Till I can remember.

15 Q. Right.

16 A. John Childs was there and -- I think.
17 I'm pretty sure he was there and I believe Mary
18 McLemore was there.

19 Q. Going back to the prior meetings that
20 you had before the August 2005 assignment that
21 you got, was anybody taking notes or minutes of
22 those meetings?

23 A. There were certainly no minutes that I
24 can remember. I probably took a few notes.

25 Q. Okay. And I'm assuming whatever notes

1 you took you didn't throw away?

2 A. I could have at that point in time,
3 yes.

4 MR. KRISTAL: I would request any
5 notes that exist on that and I
6 understand your position on that --
7 not your position but counsel's
8 position.

9 THE WITNESS: Um-hum. I
10 understand.

11 BY MR. KRISTAL:

12 Q. Did you meet with Exponent at some time
13 around the time that ChemRisk made their
14 presentation?

15 A. Yes.

16 Q. In Denver at Wheeler, Trigg as well --

17 A. That's correct.

18 Q. -- during that same trip?

19 A. Yes.

20 Q. Did ChemRisk present more than once?

21 A. I only remember one presentation.

22 Q. And who was present when Exponent
23 presented their presentation to you?

24 A. I believe it was Pat Sheehan and Greg
25 Brorby. I think that was all.

1 Q. Was Mr. Childs and Ms. McLemore present
2 as well?

3 A. Yes.

4 Q. What was it about what Exponent was
5 suggesting that you felt was better for the
6 project than what ChemRisk was suggesting?

7 MR. SCHNEIDER: Sorry. I would
8 object to the question and, Mr. Holm,
9 I will instruct you that -- do not
10 reveal your thought processes and the
11 thought processes of counsel that
12 relate to the evaluation of projects
13 that were being considered and
14 undertaken in connection with
15 litigation. You can't provide the
16 details of that. You can let
17 Mr. Kristal know who was there, when
18 it was but you can't discuss your
19 impressions and decisions as part of
20 work product work. I'm going to
21 instruct you not to provide those
22 details.

23 THE WITNESS: Okay.

24 BY MR. KRISTAL:

25 Q. So can you answer? Do you need the

1 question read back?

2 A. No.

3 Q. You can answer it without the details
4 that Mr. Schneider has talked about.

5 A. There's no way to answer the question
6 without providing detail.

7 Q. Was there any other consulting group --
8 well, strike that. Was ChemRisk competing with
9 Exponent for the portion of the
10 litigation-driven research that related to the
11 recreation of asbestos joint compound?

12 MR. SCHNEIDER: Object to the
13 form.

14 A. Yes.

15 BY MR. KRISTAL:

16 Q. Were they making presentations on any
17 other part of the project other than the
18 recreation of asbestos joint compound?

19 A. Yes.

20 Q. What other -- strike that. Were they
21 both presenting on the same subjects?

22 A. Yes, they were.

23 Q. And were they provided with the
24 subjects or did they themselves generate the
25 subjects?

1 A. I'm not sure how to answer that
2 question. Provided the subjects.

3 Q. In other words, did you or someone from
4 Georgia-Pacific say we'd like a presentation on
5 these subjects and they went ahead and presented
6 or did you say we want to do some research, tell
7 us what you think?

8 A. I think it was the latter.

9 Q. And they both happened to come up with
10 this same presentation about recreating asbestos
11 joint compound.

12 A. Yes.

13 Q. Was there a discussion about locating
14 old Georgia-Pacific original asbestos joint
15 compound?

16 A. I don't believe so, no. Well, there
17 could have been. There could have been. I
18 don't recall that part.

19 Q. Now, you had experience with Exponent
20 before in your work with Georgia-Pacific,
21 correct?

22 A. Yes.

23 Q. Did you have any experience with
24 ChemRisk before?

25 A. No.

1 Q. Was that a factor in giving the
2 contract to Exponent?

3 MR. SCHNEIDER: I'm going to
4 instruct the witness not to answer.
5 That's a question about why the
6 company did or did not select a
7 particular consulting expert. I
8 think that's protected by the
9 privileges and protections associated
10 with consulting experts and expert --
11 consulting expert communications and
12 I instruct the witness not to answer.

13 BY MR. KRISTAL:

14 Q. Okay. What were the differences in the
15 design that was being proposed?

16 MR. SCHNEIDER: Again, those are
17 details with respect to
18 communications with consulting
19 experts that are protected under the
20 law and I instruct the witness not to
21 answer that question.

22 BY MR. KRISTAL:

23 Q. Were you aware of Exponent's lengthy
24 involvement in asbestos litigation defense
25 before this meeting in Denver?

1 A. Yes.

2 Q. And you were aware that they had
3 received millions and millions of dollars from
4 other asbestos defendants in litigation,
5 correct?

6 A. I have no idea about the amount, no.

7 Q. Okay. You had certainly read the
8 number of different publications that were
9 generated from their work on asbestos
10 litigation, right?

11 A. I probably read the majority of them,
12 yes.

13 Q. Okay. They're like rabbits, they keep
14 multiplying, right?

15 MR. SCHNEIDER: Object to the
16 form.

17 BY MR. KRISTAL:

18 Q. Were you also aware of ChemRisk's
19 involvement in asbestos defense?

20 A. Yes, I was.

21 Q. Did either group provide you with any
22 transcripts of testimony that any of their
23 employees have given over the years, either
24 deposition or trial testimony, in asbestos
25 litigation?

1 A. Not to me, no.

2 Q. Who did they give them to?

3 A. I don't know if they gave them to
4 anybody.

5 Q. Now, at some point in time Exponent was
6 awarded a contract by Georgia-Pacific for this
7 litigation-driven research, correct?

8 MR. SCHNEIDER: Object to the
9 form.

10 A. That's correct.

11 BY MR. KRISTAL:

12 Q. Who gave the contract to whom? Did you
13 present the contract to someone at Exponent?

14 A. I believe it was John Childs that
15 presented it to Pat Sheehan.

16 MR. KRISTAL: I'd request a copy
17 of that. I haven't seen it in what's
18 been produced. We have contracts
19 from some of the other consultants
20 but I haven't seen the Exponent
21 contract.

22 BY MR. KRISTAL:

23 Q. When was it that Exponent signed on for
24 this litigation-driven research project?

25 A. It was sometime during 2006.

1 Q. Did they sign on before or after
2 Bernstein's contract which was -- the initial
3 contract was January '06.

4 A. It was very near the same time.

5 Q. Were there any discussions with
6 Exponent about hiring Bernstein as an additional
7 consultant?

8 A. No.

9 Q. Was there any discussion with Exponent
10 about their ability to subcontract to other
11 consultants?

12 A. I don't know if that was part of it or
13 not. I don't remember if it was during that
14 time frame or if it was afterwards -- or later I
15 should say.

16 Q. Was there any discussion with Exponent
17 about publishing the results of whatever work
18 they were doing for this litigation-driven
19 research project?

20 A. That was the intent, yes.

21 Q. To publish the results?

22 A. Yes.

23 Q. And how was that intent expressed? In
24 other words, is it in their contract? Is it --
25 was it a letter or just discussions with them

1 verbally or --

2 A. I don't believe it's in the contract.
3 It was verbal discussions between myself and
4 Exponent.

5 Q. Okay. Did you ever consider hiring a
6 consultant for this group that was more neutral
7 than the two groups you consulted with, ChemRisk
8 and Exponent, who had lengthy involvement in
9 asbestos defense?

10 MR. SCHNEIDER: Object to the
11 form. And I will instruct you, Mr.
12 Holm, that your decision-making
13 process and the decision-making
14 process of the company in determining
15 what consulting experts to hire or
16 not hire is protected activity
17 protected by the work product
18 privilege, attorney/client privilege
19 and I will instruct you not to answer
20 about your decision-making process.

21 THE WITNESS: Okay.

22 BY MR. KRISTAL:

23 Q. Who was it that came up with the names
24 of ChemRisk and Exponent to interview for this
25 project?

1 A. That would be me.

2 Q. And why did you do that?

3 A. Because I knew about what they could
4 provide and I knew their background and the
5 rigor that went into their evaluations. I knew
6 the people personally as well.

7 Q. Who did you know personally?

8 A. Well, I know Dennis and I knew Pat and
9 Greg.

10 Q. How did you know Dennis prior to this?
11 We're talking about Dennis Paustenbach.

12 A. Yes. Oh, I don't know the first time I
13 met Dennis but we've both been in the toxicology
14 area for a long time so probably at the risk
15 assessment specialty section at the Society of
16 Toxicology.

17 Q. And I'm assuming -- well, strike that.
18 Did you know that Dennis Paustenbach has been
19 involved in lots of toxic substance litigation
20 defense over the years including asbestos?

21 A. I'm very familiar with Dennis'
22 background.

23 Q. Therefore, the answer to that question
24 is yes?

25 A. That would be yes.

1 Q. What litigations were you aware of with
2 respect to Dennis Paustenbach before you
3 interviewed him for this particular project in
4 terms of other litigations he was involved in
5 defending?

6 MR. SCHNEIDER: I object to the
7 question. It doesn't relate to the
8 topics that are in the 30(b)(6)
9 notice and certainly not among the
10 topics listed but to the extent that
11 we can provide brief background
12 information, I'll permit it but it's
13 really going afield, but go ahead.

14 A. Chromium and
15 benzene.

16 BY MR. KRISTAL:

17 Q. And did you also have an awareness at
18 the time that you were interviewing the folks
19 from Exponent that they have also been involved
20 in helping defend a number of other litigations
21 besides asbestos?

22 A. Yes, but I don't have a list of what
23 those would be.

24 Q. Who do you know at Exponent? You had
25 mentioned you knew Dennis Paustenbach. Who did

1 you know before this at Exponent?

2 A. Well --

3 Q. Obviously you've coauthored with Yvette
4 Lowney.

5 A. Right. And --

6 Q. She's at Exponent, correct?

7 A. She's at Exponent. And I'm trying to
8 think of the other guy's name at Exponent that
9 was part of those publications and I can't
10 recall at this point in time. Betty Anderson.
11 Well, there's --

12 Q. She's one of the upper level
13 management --

14 A. Yeah.

15 Q. -- at Exponent?

16 A. Yeah. She was my boss when I got out
17 of grad school. Tom Deardorff is there. I mean
18 there's numerous people that I know.

19 Q. How many other toxicology consulting
20 firms are there in the country? Hundreds, other
21 than ChemRisk and Exponent?

22 A. I don't know the number. It's
23 numerous.

24 Q. Did you consider any other toxicology
25 consulting outfits other than ChemRisk or

1 Exponent for this particular asbestos project?

2 A. I believe there was a third one but
3 I -- I can't remember the name off the top of my
4 head.

5 Q. The third one whose name you can't
6 remember, were they also interviewed and
7 present?

8 A. No.

9 Q. Okay. So they were considered but
10 didn't get that far in the process?

11 A. That's correct.

12 Q. Getting back to your curriculum vitae,
13 your master's was earned in 1987 in chemical
14 oceanography?

15 A. That's correct.

16 Q. Is there a specialty that you
17 considered yourself to have in your field prior
18 to getting involved in this asbestos litigation
19 project?

20 A. I think inhalation toxicology was one
21 specialty, yes.

22 Q. But not involving asbestos.

23 A. No.

24 Q. And not involving any -- strike that.
25 Did it involve any fibers?

1 A. Yes, it did.

2 Q. Cellulose?

3 A. Correct.

4 Q. Any other fibers?

5 A. No. I mean I've read literature on --
6 well, fiberglass.

7 Q. A number of your publications have to
8 do with the effect of various discharges on
9 wildlife, is that fair to say?

10 A. Yes, it is.

11 Q. And was that a specialty of yours?

12 A. Yes, it is.

13 Q. Is it fair to say that -- you list a
14 number of different publications that were
15 generated from this litigation-driven research
16 policy, is that fair to say?

17 A. Yes. Yes. Sorry.

18 Q. Now, if you look at the bottom of page
19 3, there is the first article -- articles and
20 peer-reviewed journals, do you see that?

21 A. Um-hum. Yes.

22 Q. The first one is a Bernstein lead
23 author -- Bernstein lead author article with Ken
24 Donaldson and yourself as the last author
25 entitled, quote, "Quantification of the

1 pathological response and fate in the lung and
2 pleura of chrysotile in combination with fine
3 particles compared to amosite-asbestos following
4 short-term inhalation exposure," end quote. Do
5 you see that?

6 A. I do.

7 Q. And that's listed as having been
8 accepted for publication. That's not out yet,
9 is it --

10 A. Yes.

11 Q. -- or -- it is.

12 A. I got notification this morning from
13 David Bernstein that that's been published.

14 Q. Okay. It's online?

15 A. Yes. Early Online I think it's called.

16 Q. Right. Because I couldn't find it last
17 night.

18 A. Okay.

19 Q. Maybe we'll have it later. Now, had
20 that article been submitted to other journals
21 previously and rejected?

22 A. No.

23 Q. Is that article a continuation of the
24 series of studies that Bernstein has been
25 primarily leading for this litigation-driven

1 research project?

2 MR. SCHNEIDER: Object to the
3 form.

4 A. Yes. All the authors have their
5 own role but David has been most
6 responsible.

7 MR. SCHNEIDER: And by the way,
8 Jerry, that -- there is a copy of a
9 version of that article in the
10 production set.

11 MR. KRISTAL: No. I saw that and
12 I didn't know --

13 MR. SCHNEIDER: Okay.

14 MR. KRISTAL: I was trying to get
15 the actual published --

16 MR. SCHNEIDER: Right.

17 MR. KRISTAL: That wasn't even
18 the accepted for publication.

19 MR. SCHNEIDER: Right. It was
20 a -- it was one that says uncorrected
21 proof.

22 MR. KRISTAL: Oh, okay. Then I
23 haven't seen that one.

24 MR. SCHNEIDER: It's 1815 in your
25 set.

1 MR. KRISTAL: Okay.

2 THE WITNESS: Yeah. That's --
3 those are galleys so that has been
4 accepted for publication in that
5 form.

6 BY MR. KRISTAL:

7 Q. The next article, Brorby, Sheehan,
8 that's the Exponent group and yourself along
9 with Berman, that was published in 2011, right?
10 That's already out. There's no date on your CV
11 but --

12 A. Right.

13 Q. -- that has come out, correct?

14 A. That is correct.

15 Q. And that is a complete article on an
16 abstract that you had submitted in 2008 with the
17 same title, right?

18 A. I don't -- abstract where? It probably
19 went to American International.

20 Q. The International --

21 A. Yeah. One of the meetings -- one of
22 the scientific --

23 Q. Right.

24 A. -- meetings. It was a -- yeah, a
25 combine between AIHA and the other group I can't

1 remember.

2 Q. I have a little group --

3 A. Okay.

4 Q. -- who will be taking a look at it at
5 some point in time.

6 A. All right.

7 MR. SCHNEIDER: What was the
8 title of that one?

9 MR. KRISTAL: Quote, "Potential
10 artifacts" --

11 MR. SCHNEIDER: Okay. Thanks.

12 MR. KRISTAL: -- "associated with
13 historical preparation of joint
14 compound samples and reported
15 airborne asbestos concentrations,"
16 end quote.

17 THE WITNESS: That abstract is
18 probably in the abstracts section of
19 the CV.

20 BY MR. KRISTAL:

21 Q. Right.

22 A. Somewhere.

23 Q. Page 8. Right. The International
24 Society for Environmental Epidemiology. It's
25 listed on page 8.

1 A. I don't see it right now but...

2 Q. It's the fifth one down on page 8.

3 A. Okay. Right.

4 Q. Was that correct, that's --

5 A. Yes.

6 Q. Why did it take so long for it to go
7 from a 2008 abstract until 2011 to get
8 published?

9 A. Well, in 2008 it was just an abstract
10 and it takes a long time to write these
11 articles, especially when you have a lengthy
12 group of authors.

13 Q. Tell me the process for -- strike that.
14 Was the process essentially the same for all the
15 articles that have been generated from this
16 litigation-driven research?

17 A. Process in terms of what?

18 Q. Preparing a manuscript for submission
19 for publication.

20 A. Yes.

21 Q. Tell me what that process is.

22 A. Well, the hypothesis would be generated
23 and then the protocol would be developed, the
24 data gathered, the data discussed, the initial
25 draft of the paper written and iterations of

1 that draft manuscript, the peer-reviewed
2 comments and finally it's a final publication.

3 Q. Now, does the designation of the lead
4 author mean they were the ones who wrote the
5 manuscript and circulated it for various
6 comments?

7 A. It means they wrote the initial draft
8 or had a large role in writing the initial draft
9 and then it was iterative among the authors in
10 terms of how it was developed.

11 Q. So someone would get a copy and then
12 add comments and recirculate and it would go
13 back and forth until there was a final draft
14 that everybody was willing to sign off on?

15 A. That is correct.

16 Q. Do you have the actual written
17 protocols for each one of these studies?

18 A. Yes.

19 Q. And they're in -- either on your
20 computer or in the file cabinet?

21 A. They were in the actual article.

22 Q. Well, let me take a step back. You say
23 the first step is to generate a hypothesis, is
24 that fair to say?

25 A. That's correct.

1 Q. And a hypothesis is a question that you
2 are seeking to have answered, correct?

3 A. Yes. It's a statement, not necessarily
4 a question.

5 Q. It's a statement that you want to
6 generate data around in order to get some
7 scientific answer to see whether or not it's
8 valid or not, is that --

9 A. That is correct.

10 Q. -- fair to say?

11 A. Yes.

12 Q. Are you saying that after the
13 hypothesis was generated for each one of these
14 studies that a written protocol was developed as
15 to how exactly the group was going to try to
16 answer the hypothesis?

17 A. It wasn't always written. It depends
18 on the paper you're talking about. Sometimes a
19 protocol was already available. Sometimes we
20 had to develop it uniquely.

21 Q. For the protocols that were already
22 available, what are you talking about? Are you
23 talking about the synthetic mineral fiber
24 protocol from Europe?

25 A. It was -- that's one of them. The --

1 it was the synthetic mineral fiber protocol from
 2 Europe but it's also in the -- as determined by
 3 EULC was included both for asbestos and
 4 synthetic mineral fibers.

5 Q. So the studies that followed the
 6 protocols you just mentioned, did they ever
 7 deviate from those protocols in any way?

8 A. Yes.

9 Q. And were those deviations from the
 10 protocols preplanned?

11 A. Yes, they were.

12 MR. SCHNEIDER: Object to the
 13 form.

14 BY MR. KRISTAL:

15 Q. And are they -- was the preplanned
 16 deviations from the protocols written somewhere
 17 before the studies were begun?

18 MR. SCHNEIDER: Object to the
 19 form.

20 A. I believe they probably
 21 are.

22 BY MR. KRISTAL:

23 Q. And I'm assuming you would have those
 24 somewhere if they were written down?

25 A. Well, they're written down in the

1 article.

2 Q. No. I understand that. I'm talking
3 about -- well, strike that. When you're
4 conducting a scientific study, you develop a
5 plan as to how you're going to conduct the study
6 before you write the article, right?

7 A. Yes.

8 Q. And you develop the analyses that you
9 intend to do before you write the article before
10 you conduct the study, right?

11 A. That's correct.

12 Q. Analyses that are done after the fact
13 are called post-hoc analyses, right?

14 A. Post hoc I would say but yeah.

15 Q. And those analyses are not part of
16 original protocol because they don't arrive
17 until after you've had a look at the data
18 already, correct?

19 MR. SCHNEIDER: Object to the
20 form.

21 A. Well, I'm not sure
22 when you would do something like
23 that.

24 BY MR. KRISTAL:

25 Q. Are all of the procedures and analyses

1 that were going to be conducted on the studies
2 involving this litigation-driven research
3 project written down somewhere before the
4 studies were conducted?

5 A. Yes.

6 MR. SCHNEIDER: Object to the
7 form.

8 BY MR. KRISTAL:

9 Q. And where are those maintained?

10 A. Some of them are in my files. Some of
11 them are like in previous written manuscripts so
12 it's a combination.

13 Q. Well, when you say they're in previous
14 written manuscripts, is there a document
15 entitled protocol for study X?

16 A. There -- for the biopersistence study,
17 yes.

18 Q. Okay. So when you say the
19 biopersistent study, you're talking about the
20 series of studies that Bernstein was the lead
21 author on?

22 A. That's correct.

23 Q. So all of those studies have a
24 pre-specified written protocol that indicates
25 what the analyses are going to be, how the tests

1 are going to be conducted, all of that?

2 A. Yes.

3 Q. Okay. And who has those?

4 A. Well, I have one in my file but I'm
5 sure David has one and I'm -- RCC probably is
6 the other group that has one.

7 Q. And RCC was the group that was hired by
8 Bernstein to actually dose the rats.

9 A. Do the inhalation component, that's
10 correct.

11 Q. Is that different than dosing the rats?

12 A. No. It's more specific.

13 Q. And does Bernstein have a financial
14 interest in RCC?

15 A. Not to my knowledge.

16 Q. And he used to be the manager of RCC,
17 right?

18 A. He was a director of inhalation
19 research or something at RCC.

20 Q. And he subcontracted with RCC to do
21 that component of what you call the
22 biopersistent studies?

23 A. I would call them more than
24 biopersistence but that would be the shorthand
25 for it.

1 Q. So each one of the publications that
2 has Bernstein as a lead author has a written
3 protocol that was written and developed before
4 the study began.

5 A. That's correct.

6 Q. For the other studies are there written
7 protocols that were written and developed that
8 lay out what the hypothesis is that's being
9 tested before the studies were conducted?

10 MR. SCHNEIDER: Object to the
11 form.

12 A. Yes.

13 BY MR. KRISTAL:

14 Q. All of them.

15 A. I think so, um-hum, that I can
16 remember.

17 Q. Okay. And where are those?

18 A. They would either be in my files or at
19 Exponent.

20 MR. KRISTAL: I would request all
21 of the protocols for all of the
22 studies that have been published and
23 any others that haven't been
24 published.

25 BY MR. KRISTAL:

1 Q. Who was in the loop of reviewing drafts
2 of the manuscripts for the studies?

3 MR. SCHNEIDER: Just by way of a
4 note, Jerry, there are at least
5 certain documents that have the term
6 protocol and that are on the
7 privileged work product log so...
8 Just for your information.

9 MR. KRISTAL: Okay. I mean given
10 the timing of production, quite
11 frankly I don't know the details of
12 what is or isn't on the log so I'm
13 just going to be requesting these
14 things and we can make our arguments
15 later on.

16 MR. SCHNEIDER: Yeah. I will
17 just tell you as a -- as a general
18 rule that we went to the -- collected
19 from the files and anything that we
20 found that related to the
21 biopersistence and recreation we put
22 on the log or produced, depending
23 upon whether it's privileged or not
24 so... But you're making various
25 requests and we'll listen and list

1 them, and I just wanted to note that
2 for the record. In any event, I'm
3 sorry to interrupt you --

4 MR. KRISTAL: No. That's okay.

5 BY MR. KRISTAL:

6 Q. I was asking who was in the loop in
7 terms of reviewing the manuscripts before they
8 were submitted for publication for all of these
9 studies.

10 A. The authors --

11 MR. SCHNEIDER: Object to the
12 form. Go ahead.

13 A. Okay. The authors in
14 general.

15 BY MR. KRISTAL:

16 Q. Anyone else?

17 A. Yes.

18 Q. Who was that?

19 A. There was one attorney at GP that was
20 part of that review team.

21 Q. And who was that attorney?

22 A. Mary McLemore.

23 Q. Were there meetings of the authors
24 where you could face-to-face deal with drafts of
25 the manuscripts for any of the studies?

1 A. I don't remember any face-to-face
2 meetings to talk about the manuscripts.

3 Q. Okay. How about video conferencing or
4 Skyping or some other communications, phone
5 conferencing?

6 A. There are four -- two of the
7 manuscripts there was -- I don't know -- it
8 wasn't Skyping but WebEx and -- but for the
9 other ones it was mainly just in terms of
10 writing and talking on the phone.

11 Q. And where and when were those WebEx
12 conferences? Tell me the studies first, if you
13 would.

14 A. Yeah. It was the articles that I
15 wasn't an author on and it was the 2011 Simmons
16 and it was the 2011 Jones.

17 Q. Okay. So the two studies that were
18 done on non-asbestos joint compound that Environ
19 wrote --

20 A. Right.

21 Q. -- there were discussions of the drafts
22 of those manuscripts by phone or that was the
23 WebEx discussions?

24 A. That was the WebEx discussions.

25 Q. And had drafts of the manuscript for

1 those two studies been circulated prior to WebEx
2 so people could talk about it intelligently?

3 A. Maybe to the Environ people but not to
4 me.

5 Q. Were you on the WebEx conferences?

6 A. Yes, I was.

7 Q. And were you able to read the
8 manuscript that people were talking about while
9 the conference was going on?

10 A. That was the purpose, yes.

11 Q. Okay. So how were you provided with
12 the manuscript?

13 A. On the WebEx.

14 Q. So you're -- literally in real time as
15 the conference is going on, you're reading the
16 manuscript for the first time?

17 A. That's correct.

18 Q. And were you weighing in in terms of
19 suggestions or wordings or -- obviously you were
20 on for a reason.

21 A. Yeah. I mean for clarity, basically.

22 Q. So you were reviewing those
23 manuscripts, giving comments on this WebEx
24 conference and...

25 A. Yes.

1 Q. Was that the final you had seen of
2 those manuscripts or did a final draft come
3 across your desk in some way before they were
4 published?

5 A. Of those two, that was the first and
6 only time I'd had a chance to look at them.

7 Q. And how long were these conferences?
8 It seems like it would take a while if you're
9 going through --

10 A. Yeah.

11 Q. -- the manuscript --

12 A. Well, you're right. It took, you know,
13 several hours, two to three hours.

14 Q. Was Ms. McLemore present?

15 A. No.

16 Q. Was she involved at all?

17 A. She reviewed them in the same way that
18 I did.

19 Q. Okay. So she was at a different
20 location --

21 A. Yes.

22 Q. -- interfacing with you and the folks
23 at Environ?

24 A. It wasn't interfacing with me at the
25 time. It was separate.

1 Q. Okay. So you had some WebEx
2 conferences where you saw the Environ
3 manuscripts and commented on them with the
4 Environ authors of those articles.

5 A. Yes.

6 Q. And those took several hours.

7 A. Yes.

8 Q. Independent of that, were there WebEx
9 conferences where the GP lawyer Mary McLemore
10 was on a WebEx conference with the Environ
11 authors?

12 A. That's my understanding.

13 Q. And am I understanding you to say that
14 that was different than the conference you were
15 on?

16 A. Yes.

17 MR. KRISTAL: Can we go off the
18 video record for a second.

19 THE VIDEO OPERATOR: The time is
20 11:47. Going off the video record.

21 (Whereupon, a break was taken.)

22 THE VIDEO OPERATOR: We are back
23 on the record. The time is 12:49
24 p.m.

25 MR. SCHNEIDER: All right. Just

1 a brief statement before we continue
2 with the deposition. We've had some
3 time at the deposition this morning
4 where there's been inquiry into both
5 privileged and non-privileged or
6 protected or non-protected areas.
7 I've made various instructions on
8 those areas.

9 Mr. Holm is available for
10 deposition today, the 6th, and
11 tomorrow, the 7th, and the 8th and
12 Georgia-Pacific would request that
13 all questions that fall in the
14 non-privileged or non-protected area
15 be completed; any documents that we
16 produce that questions be asked about
17 them; the published articles,
18 questions be asked about them and be
19 done in the time that -- the time
20 period that I've described.

21 I understand from plaintiffs'
22 counsel that they don't -- they want
23 to proceed in a manner of their own
24 choosing and there's -- at least some
25 of these issues get intermixed and

1 therefore don't want to proceed in
2 that fashion.

3 But we notice that you noticed
4 the deposition from day to day.
5 We've made that block of time
6 available. I thought I had made that
7 clear in New York, but I wanted to
8 put that on the record and give you
9 the opportunity to respond and just
10 -- and we'll proceed from there.

11 MR. KRISTAL: Right. And my
12 recollection of the discussion with
13 Judge Heitler, H-e-i-t-l-e-r, which
14 was in her chambers pursuant to an
15 appeal of the special master's ruling,
16 was that she wanted us to work
17 together to get additional dates for
18 Mr. Holm's deposition but that the
19 6th, 7th and 8th -- or the 7th and
20 8th, which is tomorrow and the next
21 day, were not part of that discussion
22 because she wanted to have other
23 dates to come back as well to do some
24 of the privileged stuff if they rule
25 there's no privilege, so we have a

1 disagreement.

2 MR. SCHNEIDER: I understand.

3 MR. KRISTAL: My understanding
4 going into this -- and I don't think
5 there was any question -- was that we
6 were going to come down and we were
7 doing to do the deposition today and
8 then we were gonna look at dates --
9 at other dates, not tomorrow or
10 Wednesday. You know, I certainly, A,
11 don't have either clothing or
12 scheduling time to accommodate the
13 7th and 8th.

14 MR. SCHNEIDER: All right. We
15 will -- our disagreement is noted.
16 Our position's on the record and we
17 can move forward.

18 BY MR. KRISTAL:

19 Q. Now, we were discussing the Environ
20 articles and the WebEx conferences before the
21 lunch break. Do you recall that?

22 A. Yes.

23 (Exhibit 4 was marked for
24 identification.)

25 BY MR. KRISTAL:

1 Q. I'm going to mark as Exhibit 4 a letter
2 from Mr. Childs dated August 21, 2007, to Fred
3 Boelter attaching a consulting agreement. If
4 you would take a look at that.

5 Is this a contract whereby
6 Georgia-Pacific and what later became Environ
7 was doing work on this litigation-driven
8 research project?

9 MR. SCHNEIDER: Object to the
10 form. And can I have a standing
11 objection to the form on your use of
12 the term litigation-driven and I
13 won't have to keep saying that?

14 MR. KRISTAL: Sure. But quite
15 frankly it's not my term.

16 MR. SCHNEIDER: I saw you point
17 it out in the resume, but it can have
18 different meanings and therefore I
19 object to the form. So if I could
20 have a standing objection on it, I
21 won't object to every question on
22 that ground. Is that acceptable to
23 you?

24 MR. KRISTAL: Sure.

25 MR. SCHNEIDER: Okay.

1 MR. KRISTAL: Well, acceptable
2 that any question where I use that
3 you have an objection to me using it.
4 Is that what you're --

5 MR. SCHNEIDER: Yes. That's what
6 I mean. Exactly. Thank you.

7 MR. KRISTAL: As we go forward.

8 MR. SCHNEIDER: Yes.

9 BY MR. KRISTAL:

10 Q. Is this the consulting agreement that
11 Environ or what became Environ signed and was
12 doing research for this litigation-driven
13 research project?

14 A. Yes. It's not what was becoming
15 Environ. Boelter joined Environ. It already
16 existed, but that's the proper agreement.

17 Q. Okay. So let me ask you this then.
18 Fred Boelter as part of Boelter Associates was
19 the consultant that was hired by
20 Georgia-Pacific. It was not originally Environ,
21 is that what you're saying?

22 A. That's correct.

23 Q. And when Boelter joined Environ, the
24 contract just followed him in essence?

25 A. Yes.

1 Q. And this letter attaches the consulting
2 agreement, does it not?

3 A. Let me look at the last page.

4 MR. KRISTAL: And for the record
5 it's NYCAL 10 through 13.

6 A. Yes.

7 MR. KRISTAL: It's N-Y-C-A-L in
8 all caps.

9 BY MR. KRISTAL:

10 Q. Let's take a look at the consulting
11 agreement if we could. First of all, it's
12 signed by both Mr. Childs and Fred Boelter, is
13 it not?

14 A. Yes, it is.

15 Q. And under the first paragraph,
16 engagement it says, quote, "client" and that
17 would be Georgia-Pacific, right?

18 A. Yes.

19 Q. Quote, "Client hereby engages Fred
20 Boelter services and others he deems appropriate
21 through consultant to assist the client in
22 connection with an independent evaluation of
23 certain asbestos exposure reconstruction
24 project," and that was termed the project, end
25 quote. Do you see that?

1 A. Yes, I do.

2 Q. Okay. Now, what asbestos exposure
3 reconstruction work project is this talking
4 about?

5 A. Well, it's talking about the field
6 investigation and also the combination study
7 that tied in the asbestos and non-asbestos
8 material.

9 Q. Well, when you say a combination study
10 that tied in the asbestos and non-asbestos
11 material, what are you talking about?

12 A. It was the chamber, the -- not in the
13 warehouse but the Exponent chamber generated
14 data on particulate and fiber and that tied in
15 to the particulate data that was generated in
16 the chamber in the warehouse.

17 Q. On the non-asbestos.

18 A. That's correct.

19 Q. In what way did it tie in?

20 A. It looked at the emission of
21 particulate from both the historic as well as
22 the new joint compound and applied that to what
23 would be calculated from the asbestos material
24 for the new joint compound.

25 Q. Well, what's that got to do with the

1 non-asbestos product that's on the market now?

2 A. It doesn't have anything to do with the
3 current product.

4 Q. Okay. Was the Boelter studies -- tell
5 me what material they were looking at.

6 A. They -- they were actually looking at
7 modern-day ToughRock material from Marietta,
8 Georgia.

9 Q. So they were looking at joint
10 compound -- currently sold joint compound.

11 A. That's correct.

12 Q. And did they compare the components of
13 the current non-asbestos joint compound with any
14 of either the historical Georgia-Pacific
15 asbestos joint compound or the reformulated
16 joint compound?

17 A. Recreated, yes.

18 Q. And the -- what were the comparisons?
19 Were they the same, different?

20 A. They were pretty much identical except
21 for the asbestos material.

22 Q. And therefore what? I mean how did
23 that project fit into the whole big project?

24 A. Well, it was -- it was able to
25 calculate the expected asbestos fibers that

1 would be generated in the field.

2 Q. You're saying studies on joint --
3 current joint compound that doesn't have
4 asbestos in it can be used to calculate what
5 would have been in an exposure from asbestos
6 joint compound historically?

7 A. It -- not really, no, not exactly how
8 you've stated it.

9 Q. Well, I'm trying to find out how
10 current non-asbestos joint compound studies has
11 anything to do with asbestos-containing joint
12 compound.

13 A. I understand.

14 Q. Okay. Can you tell me how if any way?

15 A. Yes. We have data from the -- from the
16 chamber -- from the Exponent chamber that shows
17 emissions of particulate and fiber and the
18 particulate matches pretty much identically
19 between the chamber and a field investigation
20 and we're able to calculate the emission of
21 particulate from both of those materials and
22 we're able to then calculate the amount of fiber
23 that would be released in the field.

24 Q. How do you -- would you do that?

25 A. Through the examination of the

1 recreated material compared to the modern
2 material.

3 Q. So you're saying if you take -- if you
4 sand recreated asbestos-containing joint
5 compound and look at it and you sand current
6 non-asbestos joint compound, you basically are
7 saying the non-asbestos particulate matter is
8 the same so you can make calculations of what
9 the asbestos exposures would have been?

10 MR. SCHNEIDER: Object to the
11 form.

12 A. Not with just what
13 you said, but if you tie that in to
14 the emission of the historic
15 material -- a recreated material and
16 the emission of the modern-day
17 material, then you can calculate the
18 fiber that would be released from
19 historic material.

20 BY MR. KRISTAL:

21 Q. Is there an article that says that?

22 A. There is a -- at this point in time
23 there's an article that's been submitted. We
24 haven't received comments at this point.

25 Q. Okay. So there's another article

1 coming out kind of putting together what the
2 Exponent people did with what the Boelter people
3 did?

4 A. That's correct.

5 Q. And who's the lead author on that?

6 A. It's Greg Brorby.

7 Q. So he won the arm wrestling contest
8 with Boelter, is that it?

9 A. I don't know if they had one or not.

10 Q. Is Boelter a coauthor?

11 A. Yes, he is.

12 Q. Are you a coauthor?

13 A. I am.

14 Q. And where has that been submitted or
15 has it not yet been submitted?

16 A. It's been submitted and I don't recall
17 the journal at this point in time.

18 Q. Now, when this contract says in
19 connection with an independent evaluation,
20 what -- what is that? What independent
21 evaluation was Boelter supposed to do?

22 A. That was he being independent would
23 make that evaluation.

24 Q. So Boelter was given free reign to
25 conduct tests on non-asbestos joint compound?

1 A. Yes, he was.

2 Q. And did you ever meet with Boelter to
3 discuss with that -- to discuss that with him?

4 A. I don't know if I met with him. We did
5 have that discussion that that would be a useful
6 part of the project, to have some field data and
7 past that it was basically up to him until I saw
8 a draft of the article.

9 Q. Was anyone from Exponent involved in
10 discussions with Boelter either with you or not
11 with you regarding two projects they were
12 working on?

13 A. There was some discussion.

14 Q. Who was involved from the Exponent
15 side?

16 A. Wayne Berman, Pat Sheehan, Greg Brorby
17 and probably -- let me just get the name. I'll
18 forget his name. Ken Bogen.

19 Q. Is he from Exponent?

20 A. Yeah. He's a statistician from
21 Exponent.

22 Q. And when did these meetings take place?

23 A. I don't recall. A couple of years ago.

24 Q. Was it before or after the first
25 Brorby/Holm articles on recreation came out in

1 2008?

2 A. After.

3 Q. So those discussions came after this
4 consulting agreement which is August 2007.

5 A. Yeah. I would expect so, yes.

6 Q. Why didn't Exponent just do those
7 studies, the ones that Boelter ended up doing?

8 A. I'm sure they could have but the
9 Environ group was an organization that we wanted
10 to use.

11 Q. Why was that?

12 A. Just to have further consultants work
13 as part of the project.

14 Q. Okay. And I assume you knew before
15 Mr. Boelter was hired that he had extensive
16 experience in asbestos defense, right?

17 A. I didn't know Fred that well to know
18 that one way or another.

19 Q. Nobody told you Fred Boelter's been
20 testifying for years for asbestos defendants --

21 A. Yes.

22 Q. -- before you hired him?

23 A. Not at that point in time did I know
24 that. I was told later. Yes.

25 Q. Who were you told by?

1 A. John Childs.

2 MR. SCHNEIDER: I would simply
3 remind you, Mr. Holm, not to disclose
4 any communication that you had with
5 counsel. And I understand the
6 circumstance --

7 THE WITNESS: Thank you.

8 MR. SCHNEIDER: But just a
9 reminder.

10 BY MR. KRISTAL:

11 Q. Under the third paragraph of
12 Mr. Boelter's contract under client direction,
13 do you see that?

14 A. Yes, I do.

15 Q. It says, quote, "All of the
16 consultant's activities pursuant to this
17 engagement will be undertaken at the request of
18 client but will be conducted independent of any
19 direction from client. Consultant's tasks will
20 be defined by questions posed by John C. Childs,
21 chief litigation counsel of the client," end
22 quote. Do you see that?

23 A. I do.

24 Q. Is that your understanding of how the
25 process worked?

1 A. Yes.

2 Q. Were you ever at any meetings where the
3 questions to be asked of Mr. Boelter were
4 discussed?

5 A. No.

6 Q. So as far as you know, Boelter was
7 getting directions directly from Mr. Childs?

8 MR. SCHNEIDER: I would instruct
9 you, Mr. Holm, to answer that
10 question but only if you can -- only
11 if you can answer it without
12 revealing information shared during
13 the attorney/client privilege.

14 A. Okay. I don't know
15 if those communications occurred or
16 not.

17 BY MR. KRISTAL:

18 Q. The contract with Boelter, Exhibit 4,
19 continues, quote, "All reports, memoranda,
20 summary of findings and any similar documents
21 and communications are to be kept in the
22 strictest confidence by consultant and others
23 working on its behalf and are to be delivered to
24 the client only addressed to the attention of
25 John C. Childs, Chief Litigation Counsel," end

1 quote. Is that your understanding of how that
2 process worked?

3 A. Yes.

4 Q. Who owned the data, Georgia-Pacific?

5 A. No. Environ would have owned the data
6 in that case.

7 Q. Well, Environ owned the data but they
8 were not free to disclose it without
9 Georgia-Pacific's permission, is that fair to
10 say?

11 A. I think that's fair to say.

12 Q. And that's true with all of these
13 consultants, whatever studies they were doing,
14 before they could make any of the results
15 public, they had to get Georgia-Pacific's
16 permission, right?

17 A. I didn't review it to be that strict,
18 no.

19 Q. So if Exponent wanted to publish any
20 article they wanted using any of the data from
21 any of the studies, Georgia-Pacific would have
22 no say in whether they would be allowed to do
23 that or not?

24 A. Well, it was my understanding that any
25 data that would be generated would be produced

1 as a scientific manuscript.

2 Q. For all the projects.

3 A. Yes.

4 Q. Going into the projects.

5 A. Yes, that's correct.

6 Q. And is that written down somewhere?

7 A. I don't believe so. It was just a
8 common understanding amongst the consultants.

9 Q. Who expressed that understanding to the
10 consultants?

11 MR. SCHNEIDER: Mr. Holm, I will
12 instruct you that your communications
13 with consulting experts are protected
14 under the law both as work product
15 and attorney/client privilege and I
16 would instruct you not to reveal the
17 content of those discussions.

18 THE WITNESS: Okay.

19 BY MR. KRISTAL:

20 Q. Well, what you're saying is
21 inconsistent, is it not, with the next paragraph
22 of Exhibit 4? It says, quote, "Consultant
23 agrees not to disclose and to hold confidential
24 all information and data received and generated
25 in connection with the services to be rendered

1 hereunder. Consultant acknowledges that all
2 materials disclosed to consultant by client and
3 the work consultant performs hereunder are
4 confidential and proprietary and consultant will
5 abide by all reasonable restrictions placed by
6 client on the dissemination of such materials
7 and work product," end quote. Do you see that?

8 A. Um-hum.

9 MR. SCHNEIDER: Object to the
10 form.

11 BY MR. KRISTAL:

12 Q. What does proprietary mean to you?

13 A. Private.

14 Q. Proprietary -- private. And who owns
15 the proprietary material? It's not proprietary
16 to the consultants, right? It's proprietary to
17 Georgia-Pacific.

18 MR. SCHNEIDER: Object to the
19 form.

20 BY MR. KRISTAL:

21 Q. Right?

22 A. I agree with that.

23 Q. So without Georgia-Pacific's
24 permission, these consultants were not free to
25 divulge the results according to the contract.

1 A. I would agree with that.

2 MR. SCHNEIDER: Object to the
3 form.

4 BY MR. KRISTAL:

5 Q. The contract with Boelter goes on to
6 say, quote, "In event consultant is served with
7 a subpoena or other legal process requiring the
8 disclosure of such materials or work product,
9 consultant will promptly advise client and will
10 cooperate with client in responding to such
11 service or process," end quote. Do you see
12 that?

13 A. No, I don't right now. Where is it?

14 Q. It was the next sentence after we
15 finished. It's the top of --

16 A. Oh, okay.

17 Q. -- page 2.

18 A. Right.

19 Q. The last sentence of paragraph four.
20 Was that your understanding generally with
21 respect to all of the consultants, that if their
22 materials were subpoenaed they were agreeing to
23 cooperate with Georgia-Pacific before they would
24 respond to the subpoena?

25 MR. SCHNEIDER: Object to the

1 form.

2 A. Yes, I believe so.

3 BY MR. KRISTAL:

4 Q. I want to show you an e-mail -- or
5 e-mail chain, much of which is going back under
6 privilege claims, relating to your first meeting
7 with Mr. Bernstein.

8 MR. KRISTAL: Let me hand you
9 Exhibit 5. I'm going to hand it to
10 you first.

11 MR. SCHNEIDER: Okay. Thank you.

12 (Exhibit 5 was marked for
13 identification.)

14 MR. KRISTAL: The first thing is
15 a copy of the chrysotile that was
16 attached to one of the e-mails.
17 While you're reading that, the Bates
18 numbers are NYCAL 954 through 997.

19 BY MR. KRISTAL:

20 Q. If you take a look at Exhibit 5,
21 please, Mr. Holm, the first two pages are what I
22 refer to as an e-mail chain and we'll explain
23 that for a second for folks who might be
24 watching this video. The rest of it is a copy
25 of a publication of Mr. Bernstein's that had

1 been accepted for publication and was going to
2 be published about six or seven months after he
3 had e-mailed it to you in October of 2005.

4 A. Okay.

5 Q. Okay?

6 A. Um-hum.

7 Q. So I want to first focus on the e-mails
8 and then we'll look at the article itself.

9 A. Okay.

10 Q. All right. An e-mail chain I'm sure
11 you're familiar with starts with someone sending
12 someone else an e-mail and then there's a
13 response and that response may get forwarded to
14 somebody else. It goes back and forth, so to
15 speak.

16 A. I understand.

17 Q. Okay. So if we're reading it, we want
18 to start at the end to see what the earliest
19 e-mail was and then pick up the chain. All
20 right. So down at the bottom you had sent an
21 e-mail to David Bernstein and you copied Mr. --
22 Dr. Deardorff and John Festa. Do you see that?

23 A. I do.

24 Q. And you wrote, quote, "The subject is
25 meeting," correct?

1 A. Um-hum.

2 Q. And the date of the e-mail is October
3 17, 2005, right?

4 A. Right.

5 Q. So that's a few months after you had
6 been given your special employee letter --

7 A. Okay.

8 Q. -- in August of 2005.

9 A. Okay.

10 Q. Correct?

11 A. Right. Right.

12 Q. You wrote, quote, "I understand from
13 John Festa that you are available to go over
14 your presentation on November 6th in Geneva.
15 Dr. Deardorff and I were considering staying at
16 the Beau-Rivage hotel downtown. Is this a
17 location that would work for you? Also, what
18 time is convenient? We'll be available in the
19 afternoon. Thank you, Stewart Holm." Do you
20 see that?

21 A. I do.

22 Q. Did you in fact go to Geneva and meet
23 with Bernstein?

24 A. Yes, I did.

25 Q. And was that in November 2005?

1 A. Yes.

2 Q. Okay.

3 A. Or November 6th so yeah.

4 Q. Well, the date there is November 6th.

5 I don't know if you actually met him on that
6 particular date. But sometime in November?

7 A. Yes. That's the day that we met with
8 him.

9 Q. Was that the first face-to-face meeting
10 that you had with David Bernstein with respect
11 to this litigation-driven research project?

12 A. That -- it wasn't part of the
13 litigation project at that point. I was just
14 talking to him about the concept. And this
15 presentation is on cellulose that he was
16 presenting to the IARC and not on asbestos.

17 Q. Okay. Did you -- at some time before
18 you went to Geneva, there must have been some
19 discussion about asbestos because if we come
20 forward in the e-mail chain, on October 21,
21 2005, Bernstein sent to you a copy of an article
22 that he had written about Brazilian chrysotile,
23 right?

24 A. Right.

25 Q. Was there a discussion about this

1 asbestos defense project with him?

2 MR. SCHNEIDER: I will object to
3 the question and instruct, Mr. Holm,
4 that to the extent you were having
5 discussions with Dr. Bernstein about
6 being a consulting expert with
7 respect to issues in the asbestos
8 litigation that you not disclose the
9 contents of those discussions.

10 A. Okay. We were discussing
11 the concept of doing specific
12 work.

13 BY MR. KRISTAL:

14 Q. And were you doing discussions of the
15 concept with knowledge that Bernstein had
16 already done the types of things he was --
17 ultimately did for GP for other asbestos
18 defendants?

19 MR. SCHNEIDER: I'm going to
20 instruct you not to answer the
21 question because it inquires into the
22 content of your discussions about a
23 consulting expert project. And I'm
24 instructing you not to answer.

25 THE WITNESS: Okay.

1 BY MR. KRISTAL:

2 Q. Did you know that Bernstein before you
3 met him in Geneva in November 2005 had done work
4 for Union Carbide in asbestos litigation -- in
5 defense?

6 A. Yes.

7 Q. And how did you come to know that?

8 A. The calidria of biopersistence paper
9 that he wrote has the acknowledgment that it was
10 paid for by Union Carbide.

11 Q. He said it was a grant from Union
12 Carbide, right?

13 A. Okay. I don't recall the information
14 precisely.

15 Q. You know it wasn't a grant, though,
16 right?

17 MR. SCHNEIDER: Object to the
18 form.

19 A. I don't understand your
20 question.

21 BY MR. KRISTAL:

22 Q. If the -- well, let's take a step back.
23 Calidria, c-a-l-i-d-r-i-a, is a type of
24 chrysotile asbestos, right?

25 A. Yes, it is.

1 Q. And the calidria mines are owned by
2 Union Carbide, right?

3 A. That's correct.

4 Q. And Union Carbide is a defendant in
5 asbestos litigation for people alleging exposure
6 and consequence of that exposure to in part
7 calidria asbestos, right?

8 A. That's my understanding.

9 Q. And you were aware before you met Dr.
10 Bernstein that he was a testifying witness for
11 Union Carbide.

12 A. I didn't know that.

13 Q. Do you know that now?

14 A. No.

15 Q. You had read the calidria article
16 before you met Dr. Bernstein.

17 A. I read several of his articles before I
18 met him. I don't know if that was one of them
19 or not.

20 Q. And that was what he called a
21 biopersistence study using a rat inhalation
22 model, right?

23 A. That's probably close to the title.

24 Q. And he sent you another article of his
25 written on behalf of a Brazilian chrysotile

1 mining company, right?

2 A. Yes.

3 Q. And that article also is about the
4 biopersistence of Brazilian chrysotile in a rat
5 inhalation model, right?

6 A. Yes, it is.

7 Q. And the authors of this study became
8 the authors of the studies that were published
9 pursuant to the Georgia-Pacific project in which
10 you were coauthors, right?

11 A. One of them but not all of them.

12 Q. Well, wasn't Rick Rogers one of the
13 authors with you, coauthors?

14 A. He was -- not on the 2008 paper but...

15 Q. Okay. He was on the 2010 paper?

16 A. And 2011.

17 Q. The one that just came out today?

18 A. That's correct.

19 Q. And Bernstein obviously was on all
20 three of those papers, right?

21 A. Yes, he was.

22 Q. And George Chevalier the pathologist?

23 A. He's on all three of them.

24 Q. And what Rick Rogers' role in all of
25 this was he has an imaging company in the United

1 States and he was subcontracted out after
 2 Georgia-Pacific had hired Bernstein. Bernstein
 3 hired him to do some confocal microscopy and
 4 some videotaping of different pathological
 5 responses, right?

6 A. That's correct.

7 Q. Have you seen the videotapes that he's
 8 prepared?

9 A. I have not.

10 Q. There are videotapes that he prepared,
 11 though, correct?

12 A. Well --

13 Q. He certainly charged you folks for it.

14 A. Yeah. It's in the contract. I think
 15 I've only seen the images. I don't think I've
 16 seen the videotape.

17 MR. KRISTAL: Okay. Well, we'd
 18 request both the images and the
 19 videotape.

20 BY MR. KRISTAL:

21 Q. So in this Brazilian chrysotile
 22 article, Bernstein is the lead author, right?

23 A. Yes.

24 Q. And he used Rogers to do some imaging,
 25 correct?

1 A. That's correct.

2 Q. And he used the RCC company to do the
3 actual inhalation study itself with the rats,
4 right?

5 A. That's correct.

6 Q. And he used Chevalier to do the
7 pathology, right?

8 A. Yes.

9 Q. And all four of those companies, if not
10 the individuals, did the work for
11 Georgia-Pacific, correct?

12 A. That's correct.

13 Q. And here down at the bottom of this
14 Brazilian article he said the study was
15 sponsored by a grant from and then it goes on to
16 list in Spanish a Brazilian -- maybe it's
17 Portuguese -- a Brazilian mining company, right?

18 A. I suppose that's what it is.

19 Q. And didn't he discuss this particular
20 study at the Chrysotile Institute conference you
21 attended?

22 A. I don't remember what his presentation
23 was.

24 Q. But you knew the upshot of this
25 research both from the calidria article and the

1 Brazilian chrysotile article before
2 Georgia-Pacific hired Bernstein was that he
3 didn't think chrysotile stuck around in the
4 lungs long enough of rats to cause any disease,
5 right, in essence?

6 A. Well, I think following the protocol
7 that he did, I think there was a range of
8 biopersistence that would be attributed to
9 chrysotile materials because he looked at it
10 from calidria to textile chrysotile.

11 Q. But you knew going in before
12 Georgia-Pacific hired Bernstein that he was of
13 the opinion based on studies he had already done
14 and written about that chrysotile doesn't stick
15 around in the lungs, doesn't biopersist in the
16 lungs long enough to cause any problem, right?

17 A. That's what -- the data would support
18 that finding.

19 Q. And you knew that going in when you
20 hired him.

21 A. Yes.

22 Q. Now, do you know what the grant process
23 is?

24 A. No.

25 Q. You've never heard of somebody

1 submitting a grant proposal to somebody and then
2 to sponsor and then the sponsor saying I approve
3 the grant and giving them money?

4 A. Yes. I'm familiar with that.

5 Q. Okay. There was no grant proposal
6 submitted to Georgia-Pacific for Bernstein's
7 work, was there?

8 A. No.

9 Q. And Georgia-Pacific certainly didn't
10 give him a grant, right?

11 MR. SCHNEIDER: Object to the
12 form.

13 BY MR. KRISTAL:

14 Q. For his asbestos work.

15 A. We -- we didn't give him one chunk sum,
16 no.

17 Q. You hired him, right?

18 A. Sure. Yes.

19 Q. Under a contract.

20 A. That's correct.

21 Q. That's different than giving someone a
22 grant --

23 MR. SCHNEIDER: Object to the
24 form.

25 BY MR. KRISTAL:

1 Q. -- right?

2 A. Okay.

3 Q. Is it -- you're not saying hiring
4 somebody on an hourly contract is the same as
5 giving them a grant to do research, are you?

6 A. Well, I've seen grants given on an
7 hourly basis or on a -- not just as one chunk of
8 money. I've seen it done in a variety of ways.

9 Q. However it's done, Georgia-Pacific did
10 not give David Bernstein a grant to his
11 research, correct?

12 MR. SCHNEIDER: Object to form.

13 A. Well, I -- okay.
14 I -- I guess my definition of grant
15 and yours may be different, but we
16 gave him a sum of money to complete
17 a task.

18 BY MR. KRISTAL:

19 Q. Well, you hired him as a litigation
20 consultant, correct?

21 A. Yes.

22 Q. And you hired him in part --

23 A. Well, not just a litigation consultant.
24 We hired him as a scientific consultant with
25 regard to the litigation.

1 Q. Let's look at his contract. Well,
2 strike that. Before Georgia-Pacific gave
3 Dr. Bernstein a contract, were you aware that he
4 had also done extensive work for tobacco
5 defendants in tobacco litigation?

6 A. No.

7 Q. Nobody told you that?

8 A. No.

9 Q. Have you come to learn that since?

10 A. I have not.

11 MR. KRISTAL: Let me show you
12 something.

13 (Exhibit 6 was marked for
14 identification.)

15 MR. KRISTAL: We'll mark as
16 Exhibit 6 -- this is a memo on
17 Battelle Laboratory letterhead. It's
18 a letter dated June 25, 1986, from
19 David M. Bernstein and Andrey
20 Nikiforov to Daniel Heck, manager of
21 life sciences for Lorillard, Inc.
22 Let me show it to counsel first and
23 then I'll read you something from it
24 and hand it to you.

25 MR. SCHNEIDER: Well, I would

1 object to any questions about this
2 document on the grounds that it's not
3 a topic listed in the 30(b)(6) notice
4 and he is not designated to discuss
5 this document and Dr. Bernstein's
6 work with Mr. Heck of Lorillard. So
7 we would object to any questions
8 about it and to any testimony he
9 provides is not the testimony of
10 Georgia-Pacific Corporation. It's
11 not under the 30(b)(6) notice.

12 MR. KRISTAL: We have differences
13 of opinion regarding the scope of the
14 30(b)(6) notice and what isn't or is
15 within the scope of that so we'll
16 just proceed from there.

17 BY MR. KRISTAL:

18 Q. Bernstein and his colleague wrote to
19 Dr. Heck, quote, "We were pleased to have you
20 visit our facility yesterday. We hope that you
21 found our discussions and the tour of the
22 laboratory to be informative. We are enclosing
23 the brochures, sample protocols and articles
24 that you requested while you were here. We hope
25 that you now feel as we do that our 18 years of

1 tobacco-related research experience and
2 state-of-the-art technology make us without
3 doubt the best qualified contract laboratory to
4 carry out this type of research," end quote.
5 That's in the first paragraph that I just read.

6 Is this the first time you're hearing
7 that Bernstein was involved for many years in
8 tobacco research?

9 A. Yes. Yes, it is.

10 Q. He never told you that at any point in
11 time?

12 A. No.

13 Q. Did you ever ask him that?

14 A. No.

15 Q. Did you ever ask him if he was involved
16 in any litigation at all before he was given a
17 contract?

18 A. I generally don't talk to him about
19 other past or current clients.

20 Q. Why is that?

21 A. I just -- that's just how I've done
22 things.

23 Q. What do you mean that's just how you've
24 done things?

25 A. Well, unless he wants to bring that up,

1 I consider that confidential and not really
2 relevant to what I'm working on.

3 Q. So the background and the type of work
4 and who someone's been working for is not
5 relevant to a decision whether you might want to
6 hire them or not?

7 A. Well, I looked through the literature
8 and I knew what Mr. Bernstein had done in the
9 areas of fiber toxicology and that's what I was
10 concerned about.

11 Q. And the work he had done in asbestos
12 fiber toxicology was all litigation defense
13 work, right?

14 MR. SCHNEIDER: Object to the
15 form.

16 A. I don't know if all
17 of it was. I know what is published
18 in the literature appears to -- I
19 don't even know if that was related
20 all to litigation, no.

21 BY MR. KRISTAL:

22 Q. Well, the two articles you knew about
23 were related to litigation, right?

24 A. Well, I didn't know that this one was
25 or not, the Brazilian one. I did know the Union

1 Carbide was.

2 (Exhibit 7 was marked for
3 identification.)

4 BY MR. KRISTAL:

5 Q. Let me mark as Exhibit 7 the contract
6 between Georgia-Pacific and Bernstein that is
7 dated January of 2006 and have you take a look
8 at that.

9 MR. KRISTAL: Oh, I'm sorry. I
10 didn't... Do you want to look at my
11 copy?

12 MR. SCHNEIDER: No, no. That's
13 all right.

14 BY MR. KRISTAL:

15 Q. Do you see that?

16 A. I do.

17 Q. And is this in fact the contract
18 between Georgia-Pacific and Bernstein from
19 January of '06?

20 A. Yes, it is.

21 MR. KRISTAL: And the Bates
22 numbers are NYCAL 73 and 74. We need
23 to go off the tape for a moment.

24 THE VIDEO OPERATOR: The time is
25 1:27 p.m. Going off the video

1 record.

2 (whereupon, a break was taken.)

3 THE VIDEO OPERATOR: We are back
4 on the record with videotape No. 3.

5 The time is 1:31 p.m.

6 BY MR. KRISTAL:

7 Q. This contract, Exhibit 7, was signed
8 just about two months after you had first met
9 Dr. Bernstein in Geneva, correct?

10 A. In Geneva, yes, correct, because I had
11 met him previously.

12 Q. Okay. Had you met him before you went
13 to Geneva in November of 2005 pursuant to your
14 work on the asbestos litigation project?

15 A. No.

16 Q. Okay. The first time you met Bernstein
17 with respect to the asbestos litigation project
18 was in November of 2005, right?

19 A. Yes.

20 Q. Who was present at the meeting in
21 Geneva in November of 2005 when the subject of
22 asbestos was discussed with Dr. Bernstein?

23 A. Dr. Bernstein and myself.

24 Q. Was anyone on a phone --

25 A. No.

1 Q. -- video conferencing? It was just the
2 two of you face-to-face?

3 A. Yes.

4 Q. Before this contract was signed in
5 January of 2006, did you have any other meetings
6 with Bernstein?

7 A. On the scientific project? Meetings,
8 no, we did not.

9 Q. Did you have any phone calls, e-mails,
10 discussions?

11 A. Not related to the scientific project,
12 no.

13 Q. What scientific project?

14 A. Well, I thought you were talking about
15 the biopersistence study --

16 Q. Oh, okay.

17 A. -- that was being done by
18 Georgia-Pacific.

19 Q. Have you ever heard before you were
20 involved in this project of litigation-driven
21 science?

22 MR. SCHNEIDER: Object to the
23 form.

24 A. No.

25 BY MR. KRISTAL:

1 Q. The purpose of the contract as stated
2 here is, quote, "the client" -- that would be
3 Georgia-Pacific, right?

4 A. Yes.

5 Q. Quote, "The client hereby commits
6 itself to hire David -- Dr. David M. Bernstein
7 as a scientific/medical consultant," end quote.
8 Do you see that?

9 A. I do. It doesn't say litigation
10 consultant like we discussed earlier.

11 MR. KRISTAL: Well, I'd move to
12 strike as nonresponsive but --

13 A. I said yes to start
14 with.

15 BY MR. KRISTAL:

16 Q. Right. And that part I have no problem
17 with. Now, Dr. Bernstein is not a medical
18 doctor, correct?

19 A. No. He's a Ph.D. in toxicology.

20 Q. Right. He's an animal inhalation Ph.D.
21 person, right?

22 A. That's his specialty.

23 Q. Right. So what medical consulting --
24 what did you have in mind here?

25 MR. SCHNEIDER: Object to the

1 form.

2 A. Medical in terms of
3 how his studies would be related or
4 predictive in their ability to review
5 human type of responses.

6 BY MR. KRISTAL:

7 Q. Is there a paper coming out on that?

8 A. No.

9 Q. Now, under specific tasks the contract
10 reads, quote, "The parties shall negotiate in
11 good faith the specific tasks of the consultant
12 which shall be described in separate
13 correspondence and which shall be considered an
14 integrated part of this agreement," end quote.
15 Do you see that?

16 A. I do.

17 Q. So at this point in time there had been
18 no specific tasks that Bernstein was going to be
19 asked to perform, is that fair to say?

20 A. Yes.

21 Q. Did you send him -- were you the person
22 who sent him separate correspondence on what the
23 tasks were to be that he was supposed to
24 perform?

25 A. No.

1 Q. Who did that?

2 A. I don't know of anybody that actually
3 did that.

4 Q. How were specific tasks given to
5 Bernstein?

6 A. They weren't, to my best knowledge.

7 Q. So what was your understanding of what
8 he was supposed to be doing at the time he
9 signed this contract?

10 A. He was supposed to be following the
11 protocol.

12 Q. What protocol?

13 A. The EULC protocol.

14 Q. It doesn't say that in the contract,
15 right?

16 A. I don't see it in here, no.

17 Q. Now, the instructions, it says here,
18 quote, "The consultant shall be fully instructed
19 about specific assignments requested, the person
20 or persons authorized to instruct him, protocols
21 and reporting requirements to enable him to
22 perform his tasks," end quote. Do you see that?

23 A. I do.

24 Q. Who was the person or persons
25 authorized to instruct him as to what he was

1 supposed to be doing?

2 A. I suppose that would be the attorneys.

3 Q. You never gave him any instructions one
4 way or the other?

5 A. No.

6 Q. No meaning you never gave him
7 instructions?

8 A. That is correct.

9 Q. And then under instructions it says,
10 quote, "The consultant commits himself to
11 diligently follow the instructions received
12 provided they do not conflict with existing
13 laws, regulations and principles of ethics and
14 professional conduct," end quote. Do you see
15 that?

16 A. I do.

17 Q. So under this contract Bernstein was
18 committing himself to follow the specific
19 instructions given to him by the Georgia-Pacific
20 attorneys, right?

21 A. I believe that's correct.

22 Q. And as compensation he was going to be
23 compensated at the amount of 350 Swiss francs
24 per hour, not including deposition and trial
25 testimony, right?

1 A. That is my understanding, yes.

2 Q. And the contract specifically has a
3 footnote that, quote, "All tasks excluding
4 deposition and trial testimony," end quote, were
5 going to be compensated at the 350 Swiss francs
6 per hour rate, right?

7 A. That's correct.

8 Q. So it was contemplated, was it not, at
9 the time that Bernstein and Georgia-Pacific
10 signed this contract that he was going to be
11 providing both deposition and trial testimony in
12 the future.

13 MR. SCHNEIDER: Object to the
14 form.

15 A. Yes.

16 BY MR. KRISTAL:

17 Q. Did you discuss that with him in
18 Geneva?

19 A. No.

20 Q. When was the first time you found out
21 that Georgia-Pacific was going to get Bernstein
22 involved in actual testifying?

23 MR. SCHNEIDER: I object to the
24 form of the question and I also
25 instruct the witness that any

1 information that you've received from
2 counsel or discussions you've had
3 with counsel about who may or may not
4 be a testifying witness are protected
5 by the attorney/client privilege and
6 the work product doctrine and I
7 instruct you not to answer that
8 question.

9 THE WITNESS: Okay.

10 MR. SCHNEIDER: If you can answer
11 it based upon information you did not
12 receive from counsel or you did not
13 receive in connection with your
14 litigation defense work then you can
15 answer it.

16 THE WITNESS: It was all related
17 to discussions with counsel.

18 BY MR. KRISTAL:

19 Q. In addition to the 350 Swiss francs per
20 hour that Bernstein was going to be compensated,
21 that was also the same amount he was going to be
22 compensated while he was traveling for any work
23 pursuant to this project, right?

24 A. That's correct.

25 Q. Whether he was doing work or not doing

1 work while he was traveling.

2 A. Yes.

3 Q. So if he's sitting on a plane from
4 Switzerland to Atlanta for a meeting snoozing,
5 he was getting \$350 an hour, right?

6 A. That's correct.

7 Q. Would you consider me for a contract
8 some day? I'm joking.

9 Under duration of the contract it says,
10 quote, "The duration of this agreement is a
11 minimum of 12 months. This agreement shall be
12 automatically renewed for a period of time of
13 the same duration unless the consultant has been
14 informed to the contrary at least one month in
15 advance before its initial term," end quote. Do
16 you see that?

17 A. I do.

18 Q. And this agreement has been
19 automatically renewed pursuant to this clause up
20 through today from January of '06, correct?

21 A. I would agree.

22 MR. SCHNEIDER: Object to the
23 form.

24 BY MR. KRISTAL:

25 Q. Well, there's not been any -- there was

1 a contract shortly after this which I'll show
2 you which added a fee for the expert testimony
3 component. But other than that, this is the
4 same contract that Bernstein is working under as
5 of 2011, right?

6 A. Yes.

7 Q. Under the termination of the agreement,
8 the second paragraph, quote, "The client is
9 aware that in entering into this agreement the
10 consultant is giving up other assignments of
11 similar duration, therefore, in case of
12 termination prior to the term, the client shall
13 agree to pay the consultant compensation owed to
14 the consultant for the balance of duration," end
15 quote. Do you see that?

16 A. I do.

17 Q. Was it your understanding that
18 Bernstein was not going to be doing other work
19 and just doing the work for Georgia-Pacific?

20 A. I'm not sure I understand your
21 question.

22 Q. Okay. It says here that
23 Georgia-Pacific is aware that Bernstein is
24 giving up other assignments of similar duration
25 and the duration is 12 months. Do you see that?

1 MR. SCHNEIDER: Object to the
2 form.

3 A. Okay.

4 BY MR. KRISTAL:

5 Q. So my question is: Was it your
6 understanding that Bernstein was giving up other
7 work and only working on this Georgia-Pacific
8 project?

9 A. Yeah. I don't recall.

10 Q. Now, he too was also under a
11 confidentiality agreement, correct?

12 A. Yes.

13 Q. It says, quote, "The consultant is
14 aware that all information, data and documents
15 made available by the client to the consultant
16 in the course of the performance of his
17 assignment shall be deemed confidential;
18 therefore, the consultant commits himself not to
19 disclose to any third party such information
20 during the period of this agreement and after
21 its termination," end quote. Do you see that?

22 A. I do.

23 Q. So Bernstein was not free to simply
24 publish his results by himself, correct?

25 A. Well --

1 MR. SCHNEIDER: Object to the
2 form.

3 A. We did publish three papers
4 but...

5 BY MR. KRISTAL:

6 Q. Well, my point is absent
7 Georgia-Pacific's permission, Bernstein was not
8 free to publish any results of these studies.

9 A. The study results were always intended
10 to be published.

11 Q. Well, if Georgia-Pacific at any point
12 in time decided that they didn't want to publish
13 them then the consultants had agreed, that it
14 would remain confidential, right?

15 MR. SCHNEIDER: Object to the
16 form.

17 A. That wasn't my
18 understanding. My understanding was
19 that any of the results that were
20 established would be put into the
21 peer-reviewed literature.

22 BY MR. KRISTAL:

23 Q. I understand what you're saying but my
24 point is at any point in time if Georgia-Pacific
25 had decided they didn't want to publish any

1 results, they had the exclusive right to prevent
2 that from happening, right?

3 MR. SCHNEIDER: Object to the
4 form.

5 A. This phrase seems to indicate
6 that.

7 BY MR. KRISTAL:

8 Q. And that's similar to the phrase we saw
9 in the Environ contract as well, right?

10 A. Yes.

11 Q. And frankly it's -- you were not free
12 to disclose anything to anybody including other
13 Georgia-Pacific employees, right, according to
14 the agreement you signed?

15 A. That's correct.

16 MR. KRISTAL: Let me mark as
17 Exhibit 8 -- this is a second
18 contract with Bernstein and this is
19 NYCAL 742 and 743 and it's signed by
20 Bernstein. I don't see the GP but
21 it's signed March of 2006.

22 MR. SCHNEIDER: Do you want to
23 mark your highlighted one?

24 MR. KRISTAL: Oh, I'm sorry. If
25 I did that, I didn't mean to.

1 Thanks. They're all highlighted
2 anyway.

3 (Exhibit 8 was marked for
4 identification.)

5 BY MR. KRISTAL:

6 Q. If you want to take a look at Exhibit
7 8, it is in essence exactly the same contract as
8 Exhibit 7 except for the addition of what
9 Bernstein's compensation would be for deposition
10 or trial testimony. Correct?

11 A. I haven't found that part. There it
12 is. Okay.

13 Q. Yeah. And compensation -- I'm sorry.
14 Paragraph four it adds a sentence that says,
15 quote, "For tasks involving either deposition or
16 trial testimony, the consultant shall be
17 entitled to compensation in the amount of 500
18 Swiss francs per hour," end quote. Do you see
19 that?

20 A. I do.

21 Q. Okay. So this is just an addition to
22 the original contract which sets the amount of
23 compensation for his trial testimony, correct?

24 A. That's what it looks like to me, yes.

25 Q. Now, my reading of the documents that

1 have been produced thus far is that at some
2 point in time both rates were set at 400 Francs
3 an hour so there was no differential. Is that
4 your understanding as well?

5 MR. SCHNEIDER: Object to the
6 form.

7 A. Say that again.

8 BY MR. KRISTAL:

9 Q. At some point in time whether it was
10 trial work or non-trial work, the rate became
11 400 Swiss francs an hour.

12 A. That doesn't ring a bell.

13 Q. Okay. I'll show you the invoices in a
14 little while. Do you know if Bernstein met with
15 anyone else at GP other than with you that one
16 time in November of 2005?

17 A. At any time or...

18 Q. Before he signed the contracts.

19 A. I don't think so.

20 Q. Did you prepare something in writing to
21 provide to Mr. Childs after your meeting with
22 Bernstein in Geneva in November of 2005?

23 MR. SCHNEIDER: Object to the
24 form.

25 A. I don't recall all

1 the detail that Mr. Childs heard at
2 that point in time around the work
3 that Dr. Bernstein was doing. I
4 don't believe that there was any
5 minutes or written documentation of
6 that discussion.

7 BY MR. KRISTAL:

8 Q. Whatever discussion you have then I
9 understand there's going to be an instruction
10 about details -- not to disclose details. There
11 was a meeting of some sort between you and
12 Mr. Childs and perhaps others reporting back on
13 what your meeting with Bernstein was about in
14 November of 2005, correct?

15 A. Yes.

16 Q. How many meetings were there discussing
17 whether or not to hire Bernstein?

18 A. I don't recall.

19 Q. Who was present at those meetings?

20 A. Probably Mr. Childs and Ms. McLemore.

21 Q. Now, you knew going in what the results
22 were going to be of his biopersistent studies
23 before they were even conducted, correct?

24 A. No.

25 Q. Well, he had already done two

1 biopersistent studies with chrysotile, right?

2 A. Yes. Three I think at that point.

3 Q. And they all came out with in essence
4 the same results, right?

5 A. No. There was a quarter of a magnitude
6 difference between them.

7 Q. What was his ultimate conclusions as
8 you understood them from his biopersistent
9 studies with chrysotile before Georgia-Pacific
10 hired him?

11 A. Said that they had low biopersistence
12 and lack of responses in terms of pathology in
13 the lung.

14 Q. Meaning it didn't stay in the lung long
15 and had very little effect on the lungs of the
16 rats, right?

17 A. Yeah. It had no effects on the lungs
18 of the rats except for some minor macrophage
19 observations.

20 Q. There are a number of different
21 laboratories that do animal inhalation studies
22 around the world, correct?

23 A. Yes.

24 Q. Did Georgia-Pacific consider hiring
25 anybody else other than Bernstein?

1 A. I looked at four specific laboratories.

2 Q. Who did you look at other than
3 Bernstein?

4 A. University of Rochester, the Fraunhofer
5 in Hanover --

6 Q. Slow down, please, not just for my sake
7 but for Jennifer's sake. University of
8 Rochester.

9 A. Um-hum. The -- now you've got me off
10 line.

11 Q. Sorry.

12 A. The Fraunhofer.

13 Q. Could you spell that.

14 A. It's German. F-r-a-u-n-h-o-f-f-e-r
15 [sic]. And that's Germany in Hanover. And
16 then a laboratory in the central UK. The
17 principal investigator is a professor named
18 Colin Hardy, Dr. Hardy.

19 Q. Did you and --

20 A. And then RCC was the final one.

21 Q. RCC itself?

22 A. Yes.

23 Q. Did you meet with individuals from each
24 of these four other laboratories that do animal
25 inhalation work?

1 A. I did.

2 Q. Was that in generally the same time
3 frame that you had seen Bernstein in November of
4 2005?

5 A. No. It was before that.

6 Q. So you had seen the four labs,
7 University of Rochester, the group in Hanover,
8 Germany, this group in the central United
9 Kingdom and RCC in Switzerland?

10 A. I didn't visit the facilities but I'd
11 reviewed the publications that had come out of
12 those groups. I talked with some of the
13 specific individuals about their capabilities so
14 that was the line.

15 Q. Had any of these four institutions that
16 you had researched in terms of the animal
17 inhalation studies had any involvement in
18 asbestos litigation?

19 A. There was one other one. That was
20 Harvard School of Public Health.

21 Q. Okay.

22 A. So there's five.

23 Q. Did any of those five have any
24 involvement in asbestos defense?

25 A. I don't know.

1 Q. Did you ask them?

2 A. Probably not.

3 Q. Did any of the publications that they
4 had written that you read indicate one way or
5 the other whether they were involved in asbestos
6 litigation?

7 A. They probably did not.

8 Q. Now, why didn't Georgia-Pacific hire
9 RCC directly as opposed to hiring Bernstein who
10 then hired RCC?

11 MR. SCHNEIDER: Mr. Holm, your
12 process of selecting which consulting
13 expert to work with and how to
14 combine them and use them is
15 protected as defense camp material
16 under the work product doctrine and
17 also under the attorney/client
18 privilege and I instruct you not to
19 answer that question.

20 THE WITNESS: Okay.

21 BY MR. KRISTAL:

22 Q. Who at the Harvard School of Public
23 Health did you speak with?

24 A. Joe Breen.

25 Q. And who at the University of Rochester

1 did you speak with?

2 A. Mark Utell.

3 Q. Now, those two facilities certainly
4 have animal inhalation capabilities, correct, to
5 do studies?

6 A. Well, sort of. I mean like the Harvard
7 School of Public Health, the actual in-life
8 inhalation component was done at RCC so it seems
9 like RCC was used as -- in that way by a variety
10 of researchers.

11 Q. And what RCC would do in essence is
12 once it was decided for how long the rats would
13 receive the dose of whatever it is they were
14 inhaling, they would be put in these various
15 tubes and they'd be exposed to an aerosol for a
16 period of time and then they would be killed and
17 sent to another laboratory for analysis, right?

18 MR. SCHNEIDER: Object to the
19 form.

20 A. Yes.

21 BY MR. KRISTAL:

22 Q. Now, over the course of a number of
23 years you were the point person, so to speak, with
24 respect to receiving the invoices from Bernstein
25 for the work as he was doing it, correct?

1 A. Yes.

2 Q. And he would send you the invoices.
3 You would review it, sign off on it and send it
4 to somebody who then would have accounting to
5 figure out a way to wire Swiss francs to his
6 Swiss bank account, right?

7 A. Yes, pretty much that way.

8 MR. KRISTAL: I'm going to mark a
9 set of invoices from Bernstein.
10 We'll mark this as Exhibit 9.

11 (Exhibit 9 was marked for
12 identification.)

13 MR. KRISTAL: These are NYCAL
14 Bates numbers not necessarily in
15 order because I pulled the invoices
16 and put them into chronological order
17 because I thought that made more
18 sense as opposed to following the
19 Bates numbers. So the Bates numbers
20 are on each document but it doesn't
21 particularly go sequentially. Can we
22 go off the video record for a second.

23 THE VIDEO OPERATOR: The time is
24 1:52 p.m. Going off the video
25 record.

1 (Whereupon, a break was taken.)

2 THE VIDEO OPERATOR: Back on the
3 record. The time is 2:06 p.m.

4 BY MR. KRISTAL:

5 Q. Mr. Holm, you have in front of you
6 Exhibit 9?

7 A. Yes.

8 Q. Maybe we went on the video record too
9 quickly. Do you want an opportunity to just
10 thumb through that or can you confirm that that
11 is a collection of various invoices sent to
12 Georgia-Pacific for payment by Bernstein along
13 with some underlying documentation and other
14 related material?

15 A. That's -- yeah, that's what it appears
16 to be.

17 Q. Okay. And the first one which is NYCAL
18 2808, it's dated Geneva, 31 January 2006, and
19 it's from Bernstein to you at Georgia-Pacific,
20 133 Peachtree Street, Atlanta, Georgia. That's
21 fairly close to where we are right now.

22 A. Pretty close.

23 Q. And he is sending you -- the reference
24 is an invoice, correct?

25 A. Yes.

1 Q. He writes, quote, "Dear Stewart,
2 following our agreement please find the attached
3 invoice for the honorarium and expenses for the
4 services requested for the period of January
5 2005," end quote. That's a typographical error,
6 would it not --

7 A. It seems to be.

8 Q. Now, these payments were not honoraria,
9 were they?

10 MR. SCHNEIDER: Object to the
11 form.

12 A. I -- they were -- that's what
13 he calls them.

14 BY MR. KRISTAL:

15 Q. Exactly. But under the -- strike that.
16 Under your understanding of the word honorarium,
17 it's not payment that you get for services
18 rendered pursuant to a contract, right?

19 A. Yes.

20 Q. You can call it whatever you want but
21 it's not an honorarium as it's commonly
22 understood, right?

23 A. I'd agree with that.

24 Q. Okay. In fact, all of his letters to
25 you use the word honorarium, if you want to flip

1 through here. Is that generally your
2 recollection?

3 A. Yes, it is.

4 Q. And you wrote to Mr. Childs here that
5 you are approving the invoice for payment and
6 this is -- I'm assuming this was probably the
7 first bill because you wrote, quote, "I don't
8 know how we pay this in Swiss francs. Maybe you
9 do," end quote. Do you see that?

10 A. Yes.

11 Q. Would that indicate it's probably the
12 first bill?

13 A. Yeah, I would imagine so.

14 Q. Okay. Just for the jury's sake at this
15 time was it -- do you know what the exchange
16 rate was? Was it almost equivalent to US
17 dollars?

18 A. I think it was --

19 Q. Pretty close.

20 A. I think it was .8 at that point in
21 time.

22 Q. Okay. So it varied from a little bit
23 less than a dollar to a little bit more than a
24 dollar at times.

25 A. I think currently it's a little bit

1 more than a dollar.

2 Q. Okay. And then the next page, just
3 using this as an example, it says invoice for
4 services rendered for the period of January 2006
5 and he had charged 16,118 Swiss francs. Do you
6 see that?

7 A. Yes.

8 Q. And that signature there with a circle,
9 that doesn't appear to be your handwriting. Is
10 that Mr. Childs signing off after you had
11 forwarded it to him as okay to pay that?

12 A. Yes, it is.

13 Q. Okay. Now, part of this bill in
14 January '06 was for travel expenses and there is
15 sort of a memo that notes -- the memo was NYCAL
16 3345 -- that there was a -- what Bernstein
17 called a business meeting Georgia-Pacific in
18 Atlanta on January 23, 2006. Do you see that?

19 A. I do.

20 Q. And he was paid for his travel time
21 pursuant to the contract, right?

22 A. Yes.

23 Q. And also his expenses for the airfare
24 were paid, right?

25 A. That's correct.

1 Q. And Georgia-Pacific put him up at the
2 Ritz Carlton, right?

3 A. Yes.

4 Q. Not too shabby. Did he have kind of
5 free reign to stay wherever he wanted when he
6 traveled under this contract?

7 A. He usually -- I remember this precisely
8 because usually guests stay around the hotels
9 near our offices and they were all full because
10 of a convention and so that's why he stayed at
11 the Ritz Carlton in Buckhead.

12 Q. Well, if we look through this log of
13 invoices, which we are, he would stay generally
14 at high-end hotels whenever he was traveling
15 under this contract, right?

16 A. Yes.

17 Q. He wasn't staying at the Holiday Inn,
18 right?

19 A. Well, the Ritz Carlton next door to us
20 is pretty low rate for the GP rate. That's why
21 I mentioned that.

22 Q. Okay. If you would turn to -- what I
23 did do in the lower left-hand corner, I put in
24 handwriting pagination so that you could follow
25 along. So if you turn to handwritten page 12...

1 A. Oh, I see what you did. Okay.

2 Q. It's NYCAL 3056.

3 A. Yes.

4 Q. This is a May 26, 2006 invoice from
5 Bernstein, correct?

6 A. Yes.

7 Q. Now, at this point your approval was
8 sent to -- that's Joel Mercer when you write,
9 quote "Joel, reviewed and approve"?

10 A. Well, I just -- usually there's a
11 letter on the front of the...

12 Q. There's usually a letter -- if I found
13 a letter, I usually put it in there. This was
14 culled from a much larger set of documents --

15 A. Okay.

16 Q. -- that are all over the map. But on
17 this you handwrote reviewed and approve and sent
18 it on to Joel, right?

19 A. Yes.

20 Q. And then down at the bottom, JJM,
21 that's Joel Mercer, approved the payment of the
22 7,303 Swiss francs, right?

23 A. Yes.

24 Q. Now, at this point in time this is only
25 a couple of months into the contract, right?

1 A. Yes.

2 Q. And he charged for travel expenses, did
3 he not?

4 A. That's what it says.

5 Q. And on the next invoice there's June of
6 2006. There were travel expenses as well. Do
7 you see that?

8 A. Are you on 13?

9 Q. Yes.

10 A. Yes.

11 Q. Do you know where he was traveling? I
12 did not find any kind of log as to --

13 A. No.

14 Q. Okay. Now, if you turn to page 16,
15 which is the October 2006 invoice, do you see it
16 says for -- quote, "for services rendered for
17 the period of October 2006"?

18 A. I do.

19 Q. And that's NYCAL 3121. And at this
20 point in time he also charged -- in addition to
21 the 350 Swiss francs an hour for his regular
22 work, he charged 500 Swiss francs an hour for
23 what he called, quote, "honorarium
24 deposition/trial," end quote. Do you see that?

25 A. I do see that.

1 Q. Okay. And his deposition and trial
2 work is not what is commonly understood to be
3 honorarium, right?

4 MR. SCHNEIDER: Object to the
5 form.

6 A. I'm not as familiar with the legal
7 terms, no.

8 BY MR. KRISTAL:

9 Q. Well, honorarium is not a legal term,
10 is it? It's a term --

11 A. No.

12 Q. -- that's commonly used for payment of
13 somebody. When you're not obliged to paying
14 them under a contract or otherwise, you give
15 them a little gift in essence for speaking
16 somewhere or doing some work.

17 MR. SCHNEIDER: Object to the --

18 BY MR. KRISTAL:

19 Q. Is that your understanding generally?

20 A. Yes. I'd agree with that.

21 Q. And a company involved in asbestos
22 litigation who hires someone under a contract to
23 testify at trial or deposition, when they pay
24 them for that work, it's not an honorarium, is
25 it?

1 A. No.

2 Q. And that was for -- I guess if we do
3 the math, he charged for about 30 hours of trial
4 work and if you look on the next page, NYCAL
5 3122, apparently there was a deposition and
6 testimony in Seattle, Washington, right?

7 A. Yes.

8 Q. And that was October 2006?

9 A. Yes, it was.

10 Q. Were you involved at all in preparing
11 him to testify for this or any other occasion
12 when he's testified on behalf of
13 Georgia-Pacific?

14 A. No.

15 Q. Did you meet with him pursuant to
16 deposition or trial preparation at any point in
17 time?

18 A. Yes.

19 Q. When was the first such time?

20 A. It wasn't before this trial. I met
21 with him before a trial outside of Dallas. I
22 don't remember the date.

23 Q. 2007?

24 A. It could have been.

25 Q. Did you attend that trial as well?

1 A. I attended his testimony.

2 Q. At the trial.

3 A. Yes.

4 Q. Other than that trial that you attended
5 in Dallas -- that was an asbestos trial and he
6 was testifying pursuant to the contract he had
7 signed with Georgia-Pacific, right?

8 A. Yes.

9 Q. Had you attended any other proceedings,
10 whether it's a deposition or trial, where
11 Bernstein has testified for Georgia-Pacific?

12 A. No.

13 Q. Have you seen any transcripts of his
14 from other testimony he's given in asbestos
15 litigation?

16 A. I've read some depositions of his.

17 Q. Okay. And more recent or is that at
18 the time you were hiring him?

19 A. I read one recently. Probably it was a
20 couple of months ago.

21 Q. And then in October -- strike that.
22 The trial in Seattle, do you know what the name
23 of that case was?

24 A. No. At least I don't recall the name
25 of it.

1 Q. Right. NYCAL 2557, which is
2 handwritten page 25, is an e-mail from Bernstein
3 to Marsha Fullard, F-u-l-l-a-r-d, and yourself
4 about an invoice and it's dated December 1,
5 2006. Do you see that?

6 A. I do.

7 Q. And Bernstein is writing -- first of
8 all, Marsha Fullard, was she in the accounting
9 department at Georgia-Pacific?

10 A. Fullard.

11 Q. Fullard. Thank you.

12 A. She's a paralegal.

13 Q. In the asbestos litigation department?

14 A. That's correct.

15 Q. Okay. And Bernstein is confirming the
16 transfer of 208,844 Swiss francs into his
17 account. Do you know what that was for?

18 A. I believe I do.

19 Q. What is your understanding of what that
20 was for?

21 A. That was for the first payment for the
22 inhalation component of the biopersistence work.

23 Q. Did Georgia-Pacific know going in how
24 much Bernstein's work would cost it?

25 A. You mean in total?

1 Q. Yes.

2 A. Bernstein's work in terms of how, for
3 David, for the studies or...

4 Q. The whole shebang that he was involved
5 with.

6 A. We --

7 MR. SCHNEIDER: I object to the
8 form.

9 MR. KRISTAL: The whole shebang
10 you're objecting to? It's a legal
11 term of art.

12 MR. SCHNEIDER: Yes. Vague,
13 ambiguous.

14 BY MR. KRISTAL:

15 Q. I'm talking about all the work he did
16 pursuant to the contract, including all of his
17 subcontract.

18 A. We have fixed costs for RCC and RIC and
19 he was paid on a monthly basis.

20 Q. What were the fixed -- RCC was the
21 group that actually had the rats in the tubes,
22 right?

23 A. Yes.

24 Q. And they're in Switzerland?

25 A. They're outside of Boswil, Switzerland.

1 Q. Okay. What was the fixed cost for
2 their work?

3 A. It was -- and that was -- the
4 microscopy was included. That was at GSA so
5 that I think was about \$750,000.

6 Q. So what you're saying is the RCC work
7 which involved the actual rats inhaling the
8 aerosol and what you call the microscopy work
9 which they subcontracted out to a German lab --

10 A. That's correct.

11 Q. -- GSA --

12 A. Yes.

13 Q. -- that whole component was \$750,000?

14 A. Correct.

15 Q. And then the RIC component, that was
16 the group in Massachusetts that was doing the
17 videotaping and photographing.

18 A. The confocal microscopy --

19 Q. Confocal microscopy.

20 A. -- is the real emphasis of that
21 activity.

22 Q. What is confocal microscopy?

23 A. It's, you know, how -- phase contrast
24 light microscopy, we use simple light in terms
25 of looking at the specimen. What confocal does

1 is it uses a laser -- a high excitation laser so
2 you can look deep into the tissue so it's a cube
3 of material that you're looking, so a very thin
4 slice.

5 Q. So sort of three-dimensional?

6 A. Three-dimensional is a good way to put
7 it. It allows you to look at the specific
8 location and along where a fiber might be
9 embedded.

10 Q. Well, the confocal microscopy was given
11 particular samples to look at, correct? They
12 weren't sent a whole lung to just check out.

13 A. Oh, no. They were sent, yes,
14 specific...

15 Q. Specifics locations to --

16 A. Parts to the lung.

17 Q. Right. And those were chosen by
18 Bernstein, right?

19 A. No. They were chosen by the protocol,
20 I believe.

21 Q. Well, wasn't Bernstein involved in
22 writing that protocol?

23 A. He was, yes.

24 Q. And what was the fixed cost for RIC to
25 Georgia-Pacific for their work?

1 A. I think it was around \$700,000.

2 Q. And how much to date has Bernstein been
3 paid?

4 A. I think it was 850, 850,000.

5 Q. And we're talking US dollars --

6 A. Yes.

7 Q. -- even though he was getting paid in
8 Swiss francs?

9 A. Yeah. My account sheet has it in
10 dollars.

11 Q. And Exponent, I'm not sure we'll get to
12 their invoices today but I've seen the most
13 recent one at least -- and I'm not sure if this
14 is a total or just for a certain project -- was
15 about three million 120 something thousand dollars.

16 A. I think the total right now is about
17 3.3 million.

18 Q. And what was the total paid to Environ
19 which was originally Boelter?

20 A. I think it's about one and a half
21 million.

22 Q. And then Berman was paid as part of the
23 Exponent bill, correct?

24 A. That's correct.

25 Q. Now, was I reading the Exponent

1 invoices correctly where they were charging on
2 top of what Berman was charging them, 15
3 percent?

4 A. Yes.

5 Q. Why would GP do that?

6 A. Well, we could have done a contract with
7 Berman directly --

8 Q. Exactly.

9 A. -- and not pay the 15 percent but it
10 was just easier to do it that way.

11 Q. Okay. Donaldson, how much was he paid
12 total?

13 A. Not very much. Maybe \$6,000.

14 Q. Okay. Were there any other consultants
15 under contract to this litigation-driven
16 research that we haven't mentioned that GP has
17 paid?

18 A. That covers all of them, either primary
19 contracts or subcontracts.

20 Q. So we're about close to \$8,000,000
21 approximately?

22 A. I --

23 Q. About \$7,000,000.

24 A. In my head I had closer to six but I
25 might have overstated on a few of those.

1 Q. Well, it's in the six to seven million --

2 A. Okay.

3 Q. -- million dollar range in there
4 generally.

5 A. Well, that's a pretty broad range. It
6 was my knowledge that it was around six million
7 dollars.

8 Q. Well, whatever the numbers are, they
9 are.

10 A. Yeah. Okay.

11 Q. How much more has Georgia-Pacific
12 budgeted for this ongoing series of studies?

13 A. We -- basically they're through. We
14 don't have any additional dollars at this point
15 in time.

16 Q. Now, Exponent was actually paid for
17 writing the manuscripts which became the
18 publications, correct?

19 A. Yes, they were.

20 Q. Was Bernstein paid as well for his time
21 in writing the manuscripts?

22 A. Yes.

23 Q. Was Boelter paid for his time in
24 writing the manuscripts?

25 A. I believe so.

1 Q. Was Berman paid for his time through
2 Exponent which was ultimately paid by
3 Georgia-Pacific for his involvement in drafting
4 the manuscripts?

5 A. Yes.

6 Q. If you would turn to handwritten page
7 32, which is NYCAL 2096, it's a January 2007
8 invoice from Bernstein. Do you see that?

9 A. I do.

10 Q. And he talks about a cancellation of
11 travel to New York. Do you see that? There was
12 some fee?

13 A. Okay.

14 Q. Did he eventually come to New York for
15 some purpose related to this project?

16 A. I can't ever remember him -- being with
17 him in New York, but it could be he was just
18 flying through New York to Atlanta.

19 Q. For some other meeting or something.

20 A. Yeah.

21 Q. Okay. If we turn to page 39
22 handwritten, NYCAL 2576...

23 A. Okay.

24 Q. This is an e-mail chain and it's three
25 pages. Do you see that?

1 A. Yes.

2 Q. And if we start at the back, on
3 February 28, 2007, Bernstein sends Marsha
4 Fullard and copies you his invoice for services
5 for February of 2007.

6 A. Right.

7 Q. Do you see that?

8 A. Yes.

9 Q. And then there was some discussion back
10 and forth between you and he about that invoice,
11 correct?

12 A. I don't know yet. I have to look.

13 Q. Oh, I'm sorry. Yeah. Just as a
14 general rule, if you -- if I'm going to -- I was
15 not looking at you. I was reading this --

16 A. Yes.

17 Q. -- so you need to let me know if you
18 need to catch up and if you want to look it or read
19 it or put it in perspective.

20 A. Yeah. This --

21 Q. I'm not trying to rush you.

22 A. I understand. This is the first time
23 that happened so... Okay.

24 Q. Okay. Why don't you take a look at all
25 three pages of the e-mail --

1 A. Okay.

2 Q. -- to orient yourself.

3 A. Okay.

4 Q. Now, after he had forwarded an e-mail
5 with his invoice for February of 2007, there was
6 some communication back and forth between you
7 and he, correct?

8 A. Yes.

9 Q. And he wrote to you on March 1, 2007,
10 in an e-mail -- that's on handwritten page 40
11 towards the bottom, quote, "Stewart, I have
12 separated out the work for each project. I was
13 instructed by the lawyers to use only the one
14 fee for the legal work so I readjusted
15 everything. Please let me know if this is as
16 you need. I will then send it again by post as
17 well. Best regards, David," end quote. Do you
18 see that?

19 A. Yes, I do.

20 Q. What is he talking about there?

21 A. He had basically merged all of his
22 hours into one bill, both the scientific work
23 and the legal work, and we asked him to separate
24 those out so that we could see which ones were
25 legal and we could apply them to a case and

1 which was scientific.

2 Q. Well, the scientific work was for
3 litigation, right?

4 A. Yes.

5 Q. He wasn't doing it as an academic
6 research project, was he?

7 A. It was pretty much academic, yes, but
8 it was for --

9 Q. But other than \$850,000 and the fact
10 that it was litigation driven, I guess it was
11 academic.

12 MR. SCHNEIDER: Object to the
13 form. And you interrupted him but...

14 MR. KRISTAL: Oh, I apologize for
15 interrupting.

16 MR. SCHNEIDER: Had you finished
17 your answer?

18 THE WITNESS: Yes.

19 BY MR. KRISTAL:

20 Q. Are you saying that a consultant who is
21 hired and who has received \$850,000 and has
22 testified in deposition and trial work and who
23 was hired under a project that was
24 litigation-driven research is similar to an
25 academic institution doing research? Is that

1 what you're saying?

2 MR. SCHNEIDER: Object to the
3 form.

4 A I think the results by either
5 laboratory would have been the same in
6 this case, yes.

7 BY MR. KRISTAL:

8 Q. Well, why didn't you hire the Harvard
9 School of Public Health then?

10 MR. SCHNEIDER: Object to the
11 form. Your decision basis for why
12 you chose one expert over another,
13 I'm going to instruct you not to
14 answer.

15 THE WITNESS: Okay.

16 BY MR. KRISTAL:

17 Q. There's another e-mail or two and you
18 wrote on March 1st further up the page the
19 contact attorney should provide you this
20 information regarding which case to bill it to.
21 Do you see that?

22 A. Yes.

23 Q. And who -- who is or was the contact
24 attorney or does it vary depending on where the
25 case is?

1 A. It varies.

2 Q. Okay. So the contact attorney in this
3 context here is the particular local
4 Georgia-Pacific outside litigation lawyer who's
5 working on a particular case for which Bernstein
6 is going to be testifying.

7 A. I don't think the contact attorney was
8 outside. I think they're inside but I'm not
9 sure about that.

10 Q. Okay. So the contact attorney here, at
11 least your present understanding, although
12 you're not sure about it, was someone in the
13 asbestos litigation department here at
14 Georgia-Pacific.

15 A. That's correct.

16 Q. Okay. And you wrote here, quote, "I'll
17 miss your depo in April. I'll be on the west
18 coast," end quote. When you said I'll miss your
19 depo in April, what were you talking about?

20 A. I imagine he was being deposed.

21 Q. All right. And what -- I'm really more
22 focusing on the I'll miss on your part. Were
23 you going to be attending his deposition?

24 A. That's what it looks from reading this.

25 Q. Have you attended any of his

1 depositions?

2 A. No, not in person.

3 Q. Okay. Have you phoned in to hear what
4 was being said at the deposition?

5 A. No.

6 Q. Okay. Have you attended the deposition
7 in some other way other than in person?

8 A. Just read the transcript.

9 Q. Well, that's certainly not what you're
10 referring to here, right?

11 A. No.

12 Q. And then on the first page, March 26,
13 '07, there was again a follow-up on the request
14 to split the work that was being done on the
15 animals from any trial work, correct?

16 A. That's correct.

17 Q. And then June of '07, handwritten page
18 50, NYCAL 2617, there's a letter attaching
19 invoices, quote, "For the honorarium and
20 expenses for the services requested for the
21 biopersistence study and the trial work for the
22 period June 2007," correct?

23 A. That's correct.

24 Q. And if you turn two pages to
25 handwritten page 53, NYCAL 2620, there's an

1 expense listed there, June 17, 2007 deposition
2 in New York. Do you see that?

3 A. I do.

4 Q. Okay. Were you at that deposition?

5 A. No.

6 Q. Do you know what case that was?

7 A. No.

8 Q. Now, he refers, on page 50, in his
9 letter he calls the honorarium both his
10 biopersistence study and his trial work,
11 correct?

12 A. That's what it looks like here, yes.

13 Q. That's certainly not an honorarium,
14 right?

15 MR. SCHNEIDER: Object to the
16 form.

17 BY MR. KRISTAL:

18 Q. That's not your understanding of an
19 honorarium, correct?

20 A. That's correct.

21 Q. And on handwritten page 57, NYCAL 2641,
22 there's a July 31, 2007 invoice in which he says
23 the same thing, he calls his biopersistence
24 study and trial work an honorarium when he
25 submits the bill, right?

1 A. He does.

2 Q. And if you look at handwritten page 62,
3 NYCAL 2661, there's an expense there for August
4 13, 2007, and it's a site visit to the RCC
5 pre-study. Do you see that?

6 A. Yes.

7 Q. And what is the RCC pre-study?

8 A. I believe we called --

9 Q. Has that got changed to pilot study in
10 the publication?

11 A. Well, maybe or maybe not. I'm not
12 positive. We -- I think this trip, if I
13 was there, it was -- yeah, it was the pilot
14 because I did attend the inhalation exposures
15 for the pilot.

16 Q. So a pilot study was done first under
17 Bernstein's direction who was operating under
18 Mr. Childs' direction by RCC.

19 A. That's correct.

20 Q. And then the results of the pilot study
21 were analyzed, correct?

22 A. Yes.

23 Q. And then a decision was made to go
24 forward with the full study based on the results
25 of the pilot study, correct?

1 A. We -- yeah, we wanted to see if the
2 actual exposures using the asbestos with fine
3 particles would -- would indeed work with the
4 rodent. We hadn't seen that before and so that
5 was the major emphasis, but the -- the full
6 study was always intended to be conducted if we
7 could -- if the pilot would show that it was
8 in fact feasible.

9 Q. At any point in time Georgia-Pacific
10 could have called off any of this work, correct?

11 A. Well, that's not how we had it set up,
12 no.

13 Q. Well, we know that the Bernstein
14 contract could have been terminated at any point
15 in time by Georgia-Pacific, correct?

16 A. That's what the contract stated, yes.

17 Q. Okay. And Georgia-Pacific could have
18 terminated any of the other contracts if they
19 chose to, right?

20 A. Well, the idea --

21 MR. SCHNEIDER: Object to the
22 form. Go ahead.

23 A. The idea was that
24 basically any of this literature --
25 any of this -- results would be in

1 fact put into a peer-reviewed
2 publication.

3 BY MR. KRISTAL:

4 Q. And was -- I think you said earlier
5 that's not written down anywhere.

6 A. That's correct.

7 Q. So where did you get that understanding
8 from?

9 A. I got that understanding from my
10 attorneys but also through Dr. Bernstein.

11 Q. Well, Dr. Bernstein didn't have the
12 authority to publish something absent
13 Georgia-Pacific's permission, right? We've
14 already established that.

15 A. It's not written in the contract but
16 that was what we had discussed with
17 Dr. Bernstein.

18 Q. If you turn to page 65, September 2007,
19 there's another invoice for the biopersistence
20 study and trial work, correct?

21 A. That's what the cover letter says, yes.

22 Q. And these are all just -- so anybody
23 watching this video, these are all addressed to
24 you. You were the point person, so to speak?

25 A. That's right.

1 Q. Okay. And then the next invoice, 67,
2 there's another invoice, October of 2007, for
3 biopersistence study and trial work. Do you see
4 that?

5 A. I do.

6 Q. And you had sent a little handwritten
7 note to Marsha Fullard, okay to pay?

8 A. Yes.

9 Q. And this -- what trial work was he
10 doing at this point in time?

11 MR. SCHNEIDER: I'm going to
12 object and instruct Mr. Holm that to
13 the extent this reflects work with a
14 consulting expert that had not
15 resulted in actual deposition
16 testimony or trial testimony that
17 that is part of and covered by the
18 consulting expert privilege even work
19 preparing for trials, and I would
20 instruct you not to provide such
21 information. If you have information
22 about cases where Mr. -- or Dr.
23 Bernstein was actually testifying as
24 opposed to preparing for a case, you
25 can identify cases where he actually

1 testified.

2 A. Okay. You're on
3 69?

4 BY MR. KRISTAL:

5 Q. Yes. No. Well, I'm on -- the bill for
6 67 says that for the period of October 2007
7 Bernstein had done some trial work. Do you see
8 that?

9 A. I do.

10 Q. And then the earlier invoice for
11 September 2007 says the same thing. And I
12 believe there was an August invoice that said
13 the same thing.

14 A. Yeah.

15 Q. So I'm just trying to find out what was
16 the trial work that Mr. Bernstein was doing
17 during this period. And Mr. Schneider, your
18 attorney, has given you the instruction he gave
19 you so...

20 A. Right.

21 Q. You can answer the question in the
22 parameters that he has currently instructed you
23 to give.

24 A. What I was asking is the business
25 expense list on 69 is what you're referring to.

1 I just want to make sure I have all these tied
2 together.

3 MR. SCHNEIDER: He's on 67. He's
4 pointing to 67.

5 THE WITNESS: Right. It's --

6 BY MR. KRISTAL:

7 Q. Well, let me ask you this: Are you
8 saying that the business expense on page 69,
9 which is NYCAL 2666, dated October 29, 2007,
10 where there was some kind of redacted privilege
11 for the purpose of the visit in Boswil,
12 Switzerland, was trial work? Is that what
13 you're saying?

14 A. I'm saying it's not trial work.

15 Q. It's not trial work.

16 A. None of this invoice was trial work.

17 Q. Right. So his letter saying there was
18 trial work was not trial work.

19 A. No.

20 Q. What was going on in Boswil, Dusseldorf
21 in October of 2007 where he expensed this money?

22 A. We did a site visit at RCC and then a
23 site visit at GSA.

24 Q. So you and he were traveling to check
25 out the labs?

1 A. We were.

2 Q. Had you ever done any work at -- strike
3 that. Had you ever been involved with any
4 projects that involved RCC or GSA prior to this
5 asbestos project?

6 A. Yes.

7 Q. When was that? With the cellulose?

8 A. Yes.

9 Q. So why were you checking them out if
10 you had already I'm assuming checked them out?

11 A. Yes, we were checking them out.

12 Q. That's what I'm saying. But you had
13 already worked with them, correct?

14 A. Right, but it was during the inhalation
15 phase of the study.

16 Q. Oh, I see. So this was checking out
17 while the study's ongoing as opposed to before
18 the study --

19 A. That's correct.

20 Q. How did the rats look? Not too happy?

21 A. No. They looked fine.

22 Q. Stuffed in a tube breathing asbestos, I
23 guess so. If you look at page 73 handwritten,
24 apparently you had dinner with Mr. Bernstein and
25 the next page also -- you were traveling around

1 with him, is that fair to say?

2 A. That's fair to say.

3 Q. And he stayed at Les Trois Rois, The
4 Three Kings?

5 A. That's correct.

6 Q. I'm assuming that's high end just by
7 the name.

8 A. It's a nice hotel.

9 Q. If you turn to page 87, which is NYCAL
10 2735...

11 MR. SCHNEIDER: What number page
12 did you say?

13 MR. KRISTAL: 87.

14 BY MR. KRISTAL:

15 Q. There's an e-mail here talking about an
16 invoice of Bernstein's being approved through
17 something called TrialNet. What is that?

18 A. It's a computer accounting program.

19 Q. Okay. So the monies paid under the
20 contract were being just tracked under a
21 computer program?

22 A. Right.

23 Q. All of it, whether it was trial work or
24 non-trial work.

25 A. Yes.

1 Q. Now, if you turn to page 92, the June
2 2008 invoice from Bernstein...

3 A. Okay.

4 Q. Do you see he's charged 350 Swiss
5 francs an hour there?

6 A. Yes.

7 Q. Okay. And if you look at the next
8 invoice for July of 2008, handwritten page 94,
9 the rate is now 400 Swiss francs an hour. Do
10 you know why that changed?

11 A. Yeah. He increased his rate.

12 Q. What did the trial rate go to?

13 A. I don't recall right now.

14 Q. The next page, handwritten page 95, is
15 July 27, 2008. Some sort of travel or meeting
16 he did. He stayed at the Three Kings Hotel
17 again. He traveled from Geneva to Boswil and
18 back. Do you know what that was for?

19 A. Yeah. That was part of the main study.

20 Q. So he was visiting RCC?

21 A. Yes.

22 Q. Now, while the study was ongoing and
23 the animals were being exposed to the asbestos
24 aerosol, Bernstein was in a different city,
25 right?

1 A. That's correct.

2 Q. Okay. So he wasn't actually conducting
3 -- continuing physically conducting the study,
4 right?

5 A. No.

6 Q. And he didn't physically conduct the
7 microscopy work. That was GSA, correct?

8 A. That's correct.

9 Q. And he didn't physically do any of the
10 confocal microscopy imaging or video imaging.
11 That was done in Massachusetts, right?

12 A. That's right.

13 Q. So why did you need Bernstein?

14 A. To pull it all together. He was
15 managing all the separate laboratories.

16 Q. Certainly it wasn't a grant that
17 Georgia-Pacific had given him, right?

18 MR. SCHNEIDER: Object to the
19 form. Asked and answered.

20 A. Yeah. I don't care what we call it.
21 It was dollars.

22 BY MR. KRISTAL:

23 Q. But whatever we call it, it wasn't a
24 grant, right?

25 MR. SCHNEIDER: Object to the

1 form.

2 A. That's fine. Yes.

3 BY MR. KRISTAL:

4 Q. Well, you know that you and he in the
5 articles that you wrote with him said the money
6 came from a grant from Georgia-Pacific, right?
7 That's what you told the public.

8 A. That's true.

9 Q. And that's what you told editors of the
10 journals to which the articles were submitted,
11 right?

12 MR. SCHNEIDER: Object to the
13 form.

14 A. It was in the
15 article. I mean we didn't have a
16 different section in a letter to the
17 editor that stated anything one way
18 or another.

19 BY MR. KRISTAL:

20 Q. Well, you're familiar with conflict of
21 interest disclosures that are required in
22 journals, correct?

23 A. Yes.

24 Q. And conflict of interest disclosures
25 for Inhalation Toxicology, that journal requires

1 disclosures in terms of any potential conflict
2 of interest that might exist, right?

3 A. Yes.

4 Q. And those conflicts of interest
5 requirements are so the editors know if there's
6 any bias or potential bias in a study, right?

7 A. Yes.

8 Q. And it also lets the public know,
9 somebody who's reading an article. There's a
10 vast difference between someone who says I got
11 money from a grant and someone who discloses I'm
12 testifying at trial; I'm testifying at
13 deposition for this company. If you had
14 disclosed that you were specially employed as a
15 litigation consultant, that's something that
16 readers of articles might want to know, right?

17 MR. SCHNEIDER: Object to the
18 form.

19 A. I don't know if they'd want to
20 know or not. I mean I was an author
21 on all of those --

22 BY MR. KRISTAL:

23 Q. Exactly.

24 A. -- manuscripts.

25 Q. And why did you let the conflict of

1 interest statement to state the money was coming
2 from a grant when you knew it wasn't coming from
3 a grant?

4 MR. SCHNEIDER: Object to the
5 form.

6 A. I hadn't really
7 thought about the language in the
8 acknowledgement section one way or
9 another. It's different in some of
10 the other manuscripts. It doesn't
11 say grant.

12 BY MR. KRISTAL:

13 Q. Right. Exactly. Only the Bernstein
14 ones said grant, right?

15 A. Yeah, I agree.

16 Q. And there's no disclosure in those
17 articles that he was acting as an expert witness
18 for Georgia-Pacific, right?

19 A. I agree with that too.

20 Q. There's no disclosure that
21 Georgia-Pacific was even involved in any
22 asbestos litigation in all of his papers that
23 you coauthored with him, correct?

24 MR. SCHNEIDER: Object to the
25 form.

1 A. That's true.

2 BY MR. KRISTAL:

3 Q. There was no disclosure that you were
4 specially employed by GP as a litigation
5 consultant in asbestos litigation, right?

6 MR. SCHNEIDER: Object to the
7 form.

8 A. I agree.

9 BY MR. KRISTAL:

10 Q. There was no disclosure that the
11 research underlying the three Bernstein
12 publications was litigation driven as you wrote
13 in your CV, right?

14 MR. SCHNEIDER: Object to the
15 form.

16 THE WITNESS: I agree.

17 BY MR. KRISTAL:

18 Q. There was no disclosure that Ken
19 Donaldson, who was a coauthor with you, was also a
20 retained litigation consultant by
21 Georgia-Pacific, right?

22 A. Well, in his case, I don't consider him
23 a litigation consultant. He was a scientific
24 consultant.

25 Q. Well, wasn't he an expert witness --

1 considered an expert witness?

2 A. I don't think he's ever been an expert
3 witness for us.

4 Q. Wasn't he considered by Georgia-Pacific
5 an expert for litigation purposes?

6 A. Considered, yes.

7 MR. KRISTAL: Can we go off the
8 video record while I try to find
9 something.

10 THE VIDEO OPERATOR: The time is
11 2:47 p.m. Going off the video
12 record.

13 (Pause in the proceedings.)

14 THE VIDEO OPERATOR: Back on the
15 record. The time is 2:48 p.m.

16 BY MR. KRISTAL:

17 Q. I'm going to digress from the Bernstein
18 invoices for a moment and mark as Exhibit 10
19 some invoices from Ken Donaldson as well as some
20 other materials related to Donaldson and his
21 involvement here.

22 A. Okay.

23 MR. KRISTAL: Again, I have
24 handwritten numbered them because the
25 NYCAL numbers were not consecutive so

1 it's handwritten 1 through 33.

2 (Exhibit 10 was marked for
3 identification.)

4 THE WITNESS: Okay.

5 BY MR. KRISTAL:

6 Q. On the first page, handwritten page 1,
7 NYCAL 3405, it's a March 29, 2006 invoice sent
8 to you from Ken Donaldson for 150 pounds. Do
9 you see that?

10 A. Um-hum.

11 Q. What was -- what was this for?

12 A. I met with Ken to discuss his interest
13 in being a consulting expert for GP.

14 Q. For the asbestos litigation project?

15 A. Yes.

16 Q. And was he sent a contract or was it
17 less formal than that?

18 A. I don't recall ever having a contract.
19 I think it was just on an hourly basis.

20 Q. Okay. And the next page, pages 2, 3, 4
21 and 5 handwritten, which is NYCAL 3046 -- I'm
22 sorry. 3046 is a standalone --

23 A. Right.

24 Q. -- e-mail from you to Marsha Fullard.
25 Do you see that?

1 A. Yes.

2 Q. And you said this is an invoice from
3 our expert in Scotland, right?

4 A. Right.

5 Q. He has made a request for payment in
6 pounds, right?

7 A. Yes.

8 Q. And you prefaced all that by saying,
9 quote, "Here's another challenge for you," end
10 quote. Do you see that?

11 A. I do.

12 Q. And then on the next page Marsha
13 Fullard from the asbestos litigation law
14 department of Georgia-Pacific sends an e-mail to
15 someone at Navigant Consulting. What kind of
16 consulting group is that? Is that on accounting
17 matters?

18 A. I suppose so. I have no idea.

19 Q. Okay. And Miss Fullard writes, quote,
20 "Please have one set up an account for this
21 Scottish expert witness, Kenneth Donaldson," end
22 quote. Do you see that?

23 A. Um-hum. Yes.

24 Q. And you're saying he was not considered
25 an expert --

1 A. No.

2 Q. -- who might testify.

3 A. I didn't say that. I said he was under
4 consideration.

5 Q. Oh, okay. And he was receiving money,
6 if you look at page 6 -- July 2007 he sent an
7 invoice for 1,560 pounds. Do you see that?

8 A. Where are you?

9 Q. Handwritten page 6 --

10 A. Yes.

11 Q. -- NYCAL 2486.

12 A. Yes.

13 Q. And he says in his invoice to you that
14 it was a subcontract to Craig Poland,
15 P-o-l-a-n-d. What was going on here?

16 A. I don't know. I don't know who Craig
17 Poland is.

18 Q. Well, Ken Donaldson was submitting
19 money to help pay for Ken Poland's time, right?

20 A. Craig Poland. Yeah.

21 Q. I'm sorry. Craig Poland. You don't
22 remember who he is?

23 A. No.

24 Q. And then on page handwritten 9, May of
25 2008, another 875 pounds. Do you see that?

1 A. Yes.

2 Q. And what was this work for?

3 A. I'm not sure but it's probably his
4 review of -- and his input into the first
5 biopersistence study paper.

6 Q. The first Bernstein paper that you
7 coauthored that was published in 2008?

8 A. That's correct.

9 Q. Now, you had also been forwarded a
10 letter that Donaldson and another person named
11 Oberdorster was -- were writing as a letter to
12 the editor defending Bernstein's work which had
13 been criticized in a journal, correct?

14 MR. SCHNEIDER: Object to the
15 form.

16 A. It actually was
17 Bernstein's use of the biopersistence
18 model that both Gunter and Ken were
19 authors on the ULCE document
20 discussing it.

21 BY MR. KRISTAL:

22 Q. Okay. So let's try to untangle this a
23 little bit. In the International Journal of
24 Occupational and Environmental Health there was
25 an article published that criticized Bernstein's

1 rat inhalation model that he had used previously
2 and the one that he was also using for
3 Georgia-Pacific, correct?

4 A. That's correct.

5 MR. SCHNEIDER: Object to the
6 form.

7 BY MR. KRISTAL:

8 Q. And Donaldson and who you refer to as
9 Gunter Oberdorster were drafting a letter to the
10 editor criticizing the article that had
11 criticized Bernstein, correct?

12 A. It wasn't an article. It was an
13 opinion but yes.

14 Q. It was a published opinion criticizing
15 Bernstein and they were sending a letter
16 criticizing the criticism, right?

17 A. That's correct.

18 Q. And they were circulating that letter
19 to Bernstein, correct?

20 A. Yes.

21 Q. And at that time they certainly knew
22 that Bernstein was involved in this asbestos
23 litigation project for Georgia-Pacific, right?

24 A. Yes. Well, Ken did. I don't know if
25 Oberdorster did or not.

1 Q. Okay. So Donaldson certainly knew when
2 he was forwarding the drafts of the letter that
3 Bernstein was working on this asbestos
4 litigation project with you because he had
5 billed for time on the project, right?

6 A. Yes.

7 Q. And the letter -- the draft of the
8 letter which was a criticism of the criticism of
9 Bernstein was being sent to you as well,
10 correct?

11 A. That is correct.

12 MR. SCHNEIDER: Object to the
13 form. It's not at all clear what
14 Bernstein you're talking about --
15 what Bernstein work you're talking
16 about. That's the basis of my
17 objection.

18 MR. KRISTAL: Oh, okay. We'll
19 untangle it.

20 BY MR. KRISTAL:

21 Q. The criticism that appeared in the
22 International Journal of Occupational and
23 Environmental Health of Bernstein's methodology
24 was not a criticism of the GP studies, correct?

25 A. That's correct.

1 Q. They were criticisms of the methodology
2 that was used in the Bernstein calidria studies
3 and Brazilian chrysotile studies, correct?

4 A. That would be correct.

5 Q. And that was the same methodology that
6 was being used in the GP studies, correct?

7 A. It was I believe so --

8 Q. Okay.

9 A. -- in each and every case.

10 Q. So although the criticism of
11 Bernstein's methodology wasn't directly
12 criticizing the Georgia-Pacific studies, it was
13 criticizing the methodology under which the
14 Georgia-Pacific study was being undertaken.

15 MR. SCHNEIDER: Object to the
16 form.

17 A. It was -- yes, for the
18 most part. There was -- yeah, for the
19 most part.

20 BY MR. KRISTAL:

21 Q. Now, when Donaldson and Oberdorster
22 sent their letter to the International Journal
23 of Occupational and Environmental Health, they
24 went out of their way to say they had no ties to
25 asbestos, right, in the letter?

1 A. I think it said it was asbestos
2 litigation, didn't it? That's what --

3 Q. Well, on handwritten page 20, it's
4 NYCAL 1362 -- do you see that?

5 A. Um-hum.

6 Q. That's a copy of the letter that was
7 sent to the International Journal of
8 Occupational and Environmental Health on which
9 you had been copied, right?

10 A. Yes.

11 Q. Okay. And they wrote in the middle of
12 the first paragraph, quote, "While not allied to
13 any asbestos manufacturing company nor any
14 pro-asbestos pressure group nor being in receipt
15 of funds from any such source, we feel it is
16 beholden on us to clarify the situation
17 regarding the use of biopersistence data
18 generally and the Bernstein data specifically,"
19 end quote. Do you see that?

20 A. I do.

21 Q. Well, they certainly were -- at least
22 Donaldson was in receipt of funds from
23 Georgia-Pacific at that time, right?

24 A. Yes, he was.

25 Q. And -- because the letter was written

1 June 2010, right?

2 A. Yes.

3 Q. And he had been consulting as a paid
4 consultant with Georgia-Pacific on the asbestos
5 litigation project since 2006, right?

6 A. From time to time, yes.

7 Q. When you got a draft of the letter did
8 you tell them that's not true, what you're
9 saying --

10 A. I didn't --

11 Q. -- for the funding?

12 A. I didn't have any correspondence with
13 Ken on this.

14 Q. So the answer is no.

15 A. That's correct.

16 Q. All right. Let's go back to Exhibit 9.
17 If you go to handwritten page 119.

18 A. Okay.

19 Q. It's an invoice again from Bernstein to
20 you for his work, correct?

21 A. Yes.

22 Q. And the next page is the actual invoice
23 and then the next page is a wire transfer
24 request form. Do you see that?

25 A. Yes.

1 Q. And it's signed off by Joel Mercer,
2 chief counsel asbestos litigation, right?

3 A. Yes.

4 Q. And the matter -- the subject was
5 asbestos expense, correct?

6 A. Where are you looking?

7 Q. Right above Joel Mercer's signature.

8 A. Okay. Yes.

9 Q. So this was clearly not designated by
10 Georgia-Pacific as any kind of grant, right?

11 A. Not on this form.

12 Q. Well, not on any form, right?

13 A. Agreed.

14 Q. If you turn to the next handwritten
15 page, it's the March 2009 invoice and then
16 behind that --

17 A. Do you have a page number?

18 Q. Yes. I'm sorry. It's the next page,
19 handwritten 122.

20 A. Okay.

21 Q. NYCAL 2780. If you turn to the next
22 page, there's an expense report.

23 A. Right.

24 Q. Do you see that?

25 A. Um-hum.

1 Q. And this is for a Society of Toxicology
2 meeting in Baltimore, March 2009, correct?

3 A. Yes.

4 Q. Now, at this point in time not only was
5 Georgia-Pacific having the results of the
6 studies put into the public domain for
7 publication but they were also presenting the
8 results at different meetings around the
9 country, correct?

10 A. Yeah. We presented at the Society of
11 Toxicology.

12 Q. Well, you presented at the Society of
13 Toxicology the results of some of the studies
14 here in Baltimore, correct?

15 A. That's correct.

16 Q. You also presented at the Society of
17 Toxicology annual meeting in 2010 in Salt Lake
18 City, Utah, correct?

19 A. Yes.

20 Q. And you presented the results of some
21 of the studies at the Society of Toxicology
22 meeting in 2011 in Washington, DC, correct?

23 A. That's correct.

24 Q. And it was presented at other meetings
25 as well, some of the results of some of the

1 studies.

2 A. Yes.

3 Q. Now, were you physically present at
4 these meetings when the results were presented?

5 A. I know I was at all of the three of the
6 SOT meetings. I think I was for -- when
7 Exponent presented as well each and every time.

8 Q. And at these meetings when you these --
9 strike that. Were these poster presentations?
10 Were they PowerPoint presentations? How
11 physically was the presentation of the results
12 of some of these studies presented?

13 A. They were both of those depending on
14 which meeting it was.

15 Q. Did you physically present or were you
16 on the stage when the information was being
17 presented?

18 A. No. Well, not at 2009 or 2010. I was
19 at the SOT in 2011.

20 Q. Who was doing the presenting for the
21 Bernstein studies -- Bernstein was doing the
22 presenting?

23 A. Yes.

24 Q. And for the Exponent studies that were
25 presented, was that Brorby or Sheehan?

1 A. Brorby did at least one or two. I'd
2 have to look at my CV and go through each one of
3 them, and most recently Pat Sheehan.

4 Q. Did Bernstein say that his research was
5 funded by a grant at these meetings when he was
6 presenting?

7 A. He didn't talk about any funding at
8 those presentations. It was not generally part
9 of the protocol.

10 Q. Do you have his PowerPoint
11 presentations?

12 A. I may. I'm not sure.

13 MR. KRISTAL: Okay. I would
14 request that as well.

15 BY MR. KRISTAL:

16 Q. Now, if you turn to page 127 -- or if
17 you look at 123, actually -- I'm sorry. I don't
18 mean to have you jump around. It appears that
19 he flew -- Bernstein flew from Geneva to Atlanta
20 first and then flew to Baltimore, right?

21 A. Okay.

22 Q. And he stayed overnight again at the
23 Ritz Carlton, if you look at page 127, correct?

24 A. Well --

25 Q. He stayed there for two nights, right?

1 A. I see the invoice. I don't see the --
2 oh, there is. Yeah, the 10th through the 12th.

3 Q. Was he meeting with you during that
4 period while he was in Atlanta?

5 A. He could have been. I don't recall
6 that time frame.

7 Q. He must have been meeting with somebody
8 at Georgia-Pacific, right --

9 A. Sure.

10 Q. -- otherwise it's kind of a circuitous
11 route to get to Baltimore via Atlanta from
12 Geneva.

13 A. I'm just --

14 MR. SCHNEIDER: Object to the
15 form.

16 A. That's a
17 possibility. I just -- I don't know
18 who he was speaking with at that
19 point.

20 BY MR. KRISTAL:

21 Q. Okay. Did you generally have meetings
22 with him prior to his presentation of the
23 results of some of the studies at these
24 meetings?

25 A. Like face-to-face meetings is what

1 you're referring to?

2 Q. Any kind, face-to-face, on the phone.

3 A. Yeah. We talked about it on the phone
4 generally. I don't recall any face-to-face
5 meetings prior to these meetings.

6 Q. Was there any disclosure by him at
7 these meetings that he was a testifying expert
8 for Georgia-Pacific?

9 A. No.

10 MR. KRISTAL: Why don't we go off
11 the video record.

12 THE VIDEO OPERATOR: The time is
13 3:05 p.m. Going off the video
14 record.

15 (Whereupon, a break was taken.)

16 THE VIDEO OPERATOR: We are back
17 on the record with videotape No. 4.
18 The time is 3:13 p.m.

19 BY MR. KRISTAL:

20 Q. Mr. Holm, if you turn to page 151
21 handwritten, NYCAL 3383, it's an October 2009
22 invoice from Bernstein. Do you see that?

23 A. Yes, I do.

24 Q. And he references in the invoice and on
25 the next page there's an expense sheet for a

1 meeting in Lyon, France?

2 A. Yes.

3 Q. And it was with you and two other
4 people, correct?

5 A. Yes.

6 Q. And one of the persons listed is a G.
7 Swaen, S-w-a-e-n?

8 A. It wasn't a meeting with those two
9 people. It was a meeting with me but we went to
10 dinner with them.

11 Q. Oh, okay. And G. Swaen is a Deutsche
12 epidemiologist, right?

13 A. That's correct.

14 Q. What was he doing at a dinner with you
15 and Bernstein in Lyon, France?

16 A. He was --

17 MR. SCHNEIDER: Now, Mr. Holm,
18 let me instruct you that if either of
19 these gentlemen were being
20 interviewed by you as potential
21 consulting experts that your
22 communications with them would be
23 protected by a consulting expert
24 privilege and I instruct you not to
25 answer. But if there's some other

1 connection to them, you are free to
2 respond.

3 A. Yeah. It was
4 another situation. The International
5 Agency for Research on Cancer was
6 having a meeting there and we were in
7 attendance at that meeting, Swaen and
8 Collins and myself.

9 BY MR. KRISTAL:

10 Q. Okay. What was Bernstein doing?

11 A. He came over to, since I was in Europe,
12 to meet with me and discuss some things in terms
13 of the research, so he came from...

14 Q. Geneva to Lyon --

15 A. Geneva to Lyon.

16 Q. -- because he knew you were in Lyon.

17 A. Yeah. It's not very far.

18 Q. Was the asbestos research discussed at
19 this dinner?

20 A. No, not at the dinner.

21 Q. How was the wine? It looks like you
22 had two bottles of nice wine there on the next
23 page.

24 A. I don't remember at this point. I'm
25 sure it was good.

1 Q. And, again, if you look at page --
2 handwritten page 160, it's a wire transfer
3 request form where Bernstein's bills are
4 referred to as a part of the asbestos expenses,
5 correct?

6 A. Yes.

7 Q. And these sheets are peppered
8 throughout here, are they not? I don't want to
9 have to turn to every single one.

10 A. I imagine they are. That's how he gets
11 paid is wire transfer so...

12 Q. Right. And the wire transfer is part
13 of what's considered asbestos expense for the
14 defense of asbestos litigation, correct?

15 A. Yes, it is.

16 Q. Turn to page 166. Bernstein was
17 billing for and paid for his presentation of
18 study results at the Society of Toxicology
19 meeting in March of 2010 in Salt Lake City,
20 correct?

21 A. That's right.

22 Q. Why did Bernstein present the results?
23 GP spent a lot of money flying the guy over from
24 Geneva, Switzerland, to Salt Lake City, Utah.
25 Why didn't you just present the results?

1 A. I could have but he's the principal
2 investigator of the study and we wanted -- it
3 was early on in terms of when we were presenting
4 that information and wanted to have him
5 available. Especially if there's any questions
6 that I couldn't answer, we would want to have
7 David answer them.

8 Q. Now, the bill on page 171, handwritten
9 171, NYCAL 3314, for May 2010 for work for the
10 period of May 2010, the cover letter includes
11 trial work. Is there trial work involvement?

12 MR. SCHNEIDER: Again, Mr. Holm,
13 I instruct you that to the extent you
14 can relate it to actual trial
15 testimony, you can identify that
16 trial testimony. If it relates to
17 consulting for trial preparation,
18 then I instruct you not to provide
19 that information.

20 BY MR. KRISTAL:

21 Q. Well, and also if you turn to page 174,
22 handwritten, it mentions Thiebault,
23 T-h-i-e-b-a-u-l-t, trial work for that
24 particular case; is that right?

25 A. I believe so.

1 Q. What was that case? Where was it
2 venued? Do you know anything about it?

3 A. I know nothing about that case.

4 Q. There's another meeting here, if you
5 turn to handwritten 181, NYCAL 3290, August 31,
6 2010. There's an invoice and there's also a
7 reference to a meeting with Victor Roggli in
8 Durham, North Carolina. Do you see that?

9 A. Yes, I do.

10 Q. August 8, 2010?

11 A. Yes.

12 Q. Was that meeting done pursuant to
13 Bernstein's work on this asbestos litigation
14 defense project?

15 A. Yes, it was.

16 Q. Who requested him to meet with Victor
17 Roggli?

18 A. I actually wanted to meet with Dr.
19 Roggli about our studies.

20 Q. Okay. And Dr. Roggli is a defense
21 expert in asbestos litigation?

22 A. He does both defense and plaintiff
23 work.

24 Q. And why did you want to meet with Dr.
25 Roggli in North Carolina about asbestos

1 litigation?

2 MR. SCHNEIDER: Mr. Holm, to the
3 extent that you were consulting with
4 Dr. Roggli as a consulting expert for
5 advice in connection with litigation
6 related matters, I instruct you not
7 to provide that information.

8 THE WITNESS: Okay.

9 BY MR. KRISTAL:

10 Q. So I guess there is no answer then,
11 given that instruction.

12 A. That's correct.

13 Q. Okay. Who was at this meeting with Dr.
14 Roggli in North Carolina in August of 2010?

15 A. It was David, myself and
16 outside counsel.

17 Q. Okay. Outside counsel from what law
18 firm?

19 A. I don't remember the person's last name
20 even. I remember his first name.

21 Q. What's his first name or her first
22 name?

23 A. Bruce.

24 Q. Not Bruce Berger?

25 A. No.

1 Q. Bruce Bishop?

2 A. Yes. Thank you.

3 Q. Bruce Bishop, does he represent
4 Georgia-Pacific anywhere locally?

5 A. I don't know his overall activity with
6 our company.

7 Q. Okay. Well, was it your understanding
8 when you were at the meeting with Bernstein,
9 Roggli and Bruce Bishop that Bruce Bishop was
10 there in his capacity as a Georgia-Pacific
11 outside attorney?

12 A. Yes.

13 Q. Have you had any other meetings or been
14 in attendance at any other meetings when Bruce
15 Bishop was present?

16 A. Yes.

17 Q. When -- strike that. How many such
18 occasions have there been?

19 A. Four or five.

20 Q. Other than this one meeting with Roggli
21 and Bishop and Bernstein and yourself, tell me
22 when -- strike that. Was this August 2010
23 meeting the first time you met with Bruce
24 Bishop?

25 A. No. I've met him a few times before

1 that.

2 Q. Okay. And who was present at those
3 meetings before, if you could go meeting by
4 meeting starting with the earliest you can
5 recall?

6 A. I'm trying to think of how many times
7 I've met with him. It was Bernstein and myself
8 and Bruce and inside counsel.

9 Q. At the prior meetings?

10 A. Yes.

11 Q. And at this August 10th meeting am I
12 understanding you correctly that there was no
13 inside counsel? It was just Bruce Bishop,
14 Bernstein, Roggli and yourself?

15 A. That's correct.

16 Q. Have you ever attended any Defense
17 Research Institute conferences, DRI?

18 A. I don't remember if it was that group
19 specifically. It could have been.

20 Q. And where is the -- where was the
21 conference that you're recalling?

22 A. In Las Vegas.

23 Q. And what year was that?

24 A. Two years ago.

25 Q. And how did you -- were you invited to

1 that meeting?

2 A. No.

3 Q. You saw a registration and you went?

4 A. Yes.

5 Q. Were the results of any of the studies
6 of this Georgia-Pacific asbestos defense project
7 presented?

8 A. I don't think so. Not that I remember.

9 Q. What was the purpose of you attending
10 the meeting?

11 A. There were various scientists there
12 that were presenting results on asbestos and
13 wanted to gain further intelligence on the
14 subject.

15 Q. And was it your understanding it was a
16 group that was -- whose membership is comprised
17 of asbestos defense attorneys?

18 A. I believe that the scientists there
19 represented both defense and plaintiff.

20 Q. I'm talking about the group that was
21 sponsoring this --

22 A. I don't know.

23 Q. -- conference.

24 A. I don't really know anything about the
25 group that was sponsoring it.

1 Q. Well, there are lots of asbestos
2 conferences given every year. How many have you
3 been to?

4 A. One.

5 Q. I'd ask you what occurred but I'm
6 afraid there will be an instruction that what
7 happens in Vegas stays in Vegas so I won't ask
8 you.

9 MR. SCHNEIDER: Stipulated.

10 BY MR. KRISTAL:

11 Q. There's another meeting -- if you look
12 on page 191 of Exhibit 9, Bernstein's invoice,
13 is that the business expense list for September
14 2010?

15 A. 191 is that --

16 Q. Yes, sir.

17 A. Yeah.

18 Q. NYCAL 3500.

19 A. Right.

20 Q. Were you at this meeting? It says
21 meeting with GP and Julian Peto, P-e-t-o.

22 A. I was.

23 Q. In London, right?

24 A. Yes.

25 Q. And Julian Peto is another

1 epidemiologist, correct?

2 A. Yes.

3 Q. And when he says meeting with GP, is he
4 referring -- strike that. Was anyone else from
5 Georgia-Pacific there besides yourself at this
6 meeting?

7 A. Yes.

8 Q. Who was there?

9 A. John Childs.

10 Q. Anyone else?

11 A. From GP?

12 Q. Well, we can start there. Anyone else
13 from GP?

14 A. No.

15 Q. Okay. Other than Bernstein, Peto and
16 yourself and Mr. Childs, who else was there?

17 A. Ken Donaldson.

18 Q. Was the meeting pursuant to your --
19 well, strike that. I'm assuming the meeting was
20 pursuant to your work on the asbestos defense
21 project because Bernstein billed Georgia-Pacific
22 for it. Right?

23 A. Bernstein did bill Georgia-Pacific,
24 yes.

25 Q. For this meeting, right?

1 A. Yes.

2 Q. And it was pursuant to the asbestos
3 defense research project, right?

4 A. Broadly.

5 MR. SCHNEIDER: Object to the
6 form. Go ahead.

7 A. Broadly, yes.

8 BY MR. KRISTAL:

9 Q. And has Julian Peto done any work on
10 this project?

11 A. On Georgia-Pacific's --

12 Q. Um-hum.

13 A. -- project? No.

14 Q. Are you aware if he's done work for
15 anybody else --

16 A. No.

17 Q. -- in asbestos litigation?

18 A. I'm not aware of him working for
19 anybody else, no.

20 Q. Who set up the meeting with Peto?

21 A. Dr. Bernstein.

22 Q. Do you know why he did that?

23 A. Yes.

24 Q. Why?

25 MR. SCHNEIDER: To the extent

1 that your knowledge on that topic
2 relates to communications that you
3 had with a consulting expert, Dr.
4 Bernstein, then I instruct you not to
5 provide that information since those
6 communications are protected. If you
7 can answer it in a way not providing
8 those communications, then you can
9 answer it.

10 THE WITNESS: I can't provide
11 them any other way.

12 BY MR. KRISTAL:

13 Q. How long was this meeting?

14 A. Four or five hours.

15 Q. I take it it wasn't over dinner.

16 A. No.

17 Q. I mean it was at somebody's office
18 somewhere?

19 A. Yes.

20 Q. At Peto's office in London?

21 A. Yes.

22 Q. Did he have any of his staff there?

23 A. No.

24 Q. Has Peto signed a contract with
25 Georgia-Pacific --

1 A. No.

2 Q. -- to do any work?

3 A. No.

4 Q. Was Peto asked to do anything for
5 Georgia-Pacific?

6 A. No.

7 Q. Did Peto give input on some aspect of
8 the project?

9 A. No, he did not.

10 MR. KRISTAL: I assume any
11 questioning about what happened you
12 would lodge an objection to, is that
13 fair to say? Well, let me just ask
14 the question.

15 BY MR. KRISTAL:

16 Q. What were you all talking about?

17 MR. SCHNEIDER: And to the extent
18 that discussions took place that were
19 not relating to your communications
20 with a consulting expert, you can
21 answer those questions. But if this
22 was a meeting to evaluate a potential
23 consulting expert or attended by a
24 potential consulting expert and you
25 were discussing things related to the

1 litigation defense, you cannot
2 provide that information.

3 THE WITNESS: It doesn't fall
4 under those.

5 MR. SCHNEIDER: All right. Then
6 if it doesn't relate to consultations
7 with consulting experts and the
8 topic's related to something else,
9 you can describe what was discussed.

10 A. Okay. It was
11 Peto's evaluation of the mesothelioma
12 rates in the UK over the years.

13 BY MR. KRISTAL:

14 Q. Why did you and Mr. Childs fly over to
15 London for that?

16 MR. SCHNEIDER: And, Mr. Holm,
17 I'll instruct you that to the extent
18 you had discussions with counsel or
19 communications with in-house counsel
20 for Georgia-Pacific relating to the
21 purposes for a meeting with a
22 particular person or talking to a
23 particular person, those
24 conversations are privileged and you
25 should not disclose the contents of

1 them.

2 THE WITNESS: Okay. That's the
3 category it falls under.

4 MR. SCHNEIDER: All right. Then
5 I would instruct you not to answer
6 further questions on this topic.

7 THE WITNESS: Okay.

8 BY MR. KRISTAL:

9 Q. Handwritten page 194, October 2010,
10 another Bernstein expense list for a meeting.
11 It says meeting GP in Atlanta and he apparently
12 met with you at least for dinner, correct?

13 A. That's what it says.

14 Q. Well, do you recall having dinner with
15 him? There's a bill -- Bluepointe Restaurant.

16 A. Yes.

17 MR. SCHNEIDER: What page is
18 that? 196 you're saying?

19 THE WITNESS: Yes.

20 BY MR. KRISTAL:

21 Q. You had a nice bottle of Barolo, right?

22 A. Um-hum.

23 Q. Why was Bernstein in Atlanta a month
24 after the meeting with Peto in September of
25 2010?

1 MR. SCHNEIDER: Mr. Holm, I would
2 instruct you that to the extent Mr.
3 -- or Dr. Bernstein was visiting on
4 some particular topic relating to
5 your consultant/expert
6 relationship communications then you
7 shouldn't disclose the topic of your
8 discussions. You can say whether he
9 was there to meet with you but you
10 can't disclose the content of your
11 communications.

12 THE WITNESS: Okay.

13 MR. SCHNEIDER: So you can answer
14 whether he was there to meet with
15 you.

16 THE WITNESS: Well, it wasn't
17 just with me.

18 BY MR. KRISTAL:

19 Q. Right. Well, let me back up. I
20 understand the instruction. I understand the
21 content of what was said you believe falls under
22 the instruction. Is that fair to say?

23 A. Yes.

24 Q. Okay. You had dinner with Mr. -- or
25 with Bernstein, correct?

1 A. Correct.

2 Q. There was a meeting prior to dinner?

3 A. It was either prior to or the day
4 after.

5 Q. Okay.

6 A. I don't recall the --

7 Q. Who was present at that meeting?

8 A. There were several lawyers there.

9 Q. Okay. Can you tell me were they both
10 inside and outside asbestos lawyers?

11 A. Yes.

12 Q. Okay. And who were the inside lawyers?

13 MR. SCHNEIDER: You can
14 identify --

15 THE WITNESS: Okay.

16 MR. SCHNEIDER: -- the lawyers
17 present.

18 THE WITNESS: It was if I can
19 remember -- it was -- what time frame
20 --

21 BY MR. KRISTAL:

22 Q. This is October -- this is just, you
23 know, seven, eight months ago maybe.

24 A. Yeah. Mary McLemore was there. John
25 Childs may or may not have been there. I'm not

1 positive so...

2 Q. Who were the outside lawyers?

3 A. Bruce was probably there.

4 Q. You're referring to Bruce Bishop as
5 opposed to Bruce Berger at --

6 A. Yeah.

7 Q. -- Spriggs & Hollingsworth?

8 A. Bruce Berger I haven't seen in a long,
9 long time. And then Kiki Carros.

10 Q. Were there any other individuals other
11 than yourself, the Georgia-Pacific inside and
12 outside lawyers and Bernstein?

13 A. No.

14 Q. Is it correct -- I know I was asking
15 earlier but for all of these meetings somebody
16 would be taking notes as to what was being
17 discussed?

18 A. I think it would be highly unlikely
19 that any notes would be taken.

20 Q. And why is that?

21 MR. SCHNEIDER: Mr. Holm, I would
22 instruct you that to the extent you
23 are going to describe a meeting
24 between counsel and consulting
25 experts and yourself, you're not to

1 describe the contents of the meeting,
2 what took place at the meeting or
3 anything about the way in which the
4 defense conducts a defense.

5 THE WITNESS: Okay. Does that
6 include why no notes were taken?

7 MR. SCHNEIDER: You're not to
8 discuss anything about the content of
9 the meeting.

10 BY MR. KRISTAL:

11 Q. Right. Unless you just -- why were no
12 notes taken?

13 A. There was a -- no need for any notes, as
14 far as I'm concerned.

15 Q. Why do you feel there was no need for
16 any notes?

17 A. Well, I didn't have any notes anyway.
18 I mean maybe the attorneys had notes. I don't
19 recall if they did or not.

20 Q. Was there any kind of presentation
21 made?

22 A. Yes.

23 Q. PowerPoint?

24 A. Yes.

25 Q. By Bernstein?

1 A. Correct.

2 Q. Different than the presentations at
3 the, for example, Society of Toxicology meeting?

4 A. Yes.

5 Q. Was it PowerPoints to be used as part
6 of trial testimony?

7 MR. SCHNEIDER: Mr. Holm, I would
8 direct you and instruct you not to
9 answer questions concerning the
10 content of the meeting and what was
11 discussed at the meeting and the
12 specifics of the meeting, and I think
13 that question crosses that line and I
14 instruct you not to answer.

15 THE WITNESS: Okay.

16 BY MR. KRISTAL:

17 Q. Well, you know that Bernstein has used
18 PowerPoint presentations when he's testified at
19 trial, correct?

20 A. Yes, he has.

21 Q. Okay. And those PowerPoint
22 presentations were not viewed by the
23 Georgia-Pacific lawyers for the first time as
24 he's on the witness stand, is that fair to say?

25 A. That fair to say.

1 Q. Did you folks have input into the
2 PowerPoint presentation?

3 MR. SCHNEIDER: I'm going to
4 instruct you not to answer that
5 question.

6 THE WITNESS: Okay.

7 BY MR. KRISTAL:

8 Q. Turn to page 202, the handwritten --
9 there's a trial prep meeting reference that
10 Bernstein was billing for in December of 2010.
11 Do you see that?

12 A. I do.

13 Q. Were you at that meeting?

14 A. Yes.

15 Q. And who else was at that meeting?

16 A. I think I was at that meeting.

17 Q. A couple of weeks before Christmas last
18 year?

19 A. Yes. And who else was at that meeting.
20 Kiki Carros was there and Wade Marrionneaux and
21 Mary McLemore.

22 Q. Okay. And why was the meeting in
23 Washington, DC?

24 A. I think because it was convenient for
25 me because I was in Washington, DC, for other

1 meetings.

2 Q. And did Bernstein present the
3 PowerPoint presentation again?

4 A. Yes.

5 Q. Was it the same or different than the
6 PowerPoint presentation he had made I guess it
7 was three months earlier at the meeting in
8 London -- I'm sorry -- that's the Peto meeting.
9 I apologize. Two months earlier in October at
10 the meeting in Atlanta.

11 A. I believe it was quite similar. I
12 can't recall any difference.

13 MR. KRISTAL: Okay. For now I'm
14 done with Exhibit 9. I'd like to
15 mark as Exhibit 10 the 2008
16 Bernstein-Holm article.

17 THE WITNESS: That's 10.

18 MR. KRISTAL: Thank you.

19 (Exhibit 11 was marked for
20 identification.)

21 BY MR. KRISTAL:

22 Q. Marking as Exhibit 11 a published
23 article by Bernstein, Donaldson, Holm and others
24 entitled "A Biopersistence Study Following
25 Exposure to Chrysotile Asbestos Alone or in

1 Combination with Fine Particles." Do you see
 2 that? Do you see where it says in the lower
 3 left-hand corner, quote, "This research was
 4 sponsored by a grant from Georgia-Pacific, LLC,"
 5 end quote? Do you see that?

6 A. Yes, I do.

7 Q. Do you have any present intention to
 8 write the editors of the journal Inhalation
 9 Toxicology and tell them that that's not
 10 correct?

11 MR. SCHNEIDER: Object to the
 12 form.

13 A. That's not been
 14 planned.

15 BY MR. KRISTAL:

16 Q. Well, you don't disagree that that's
 17 not correct, right?

18 MR. SCHNEIDER: Object to the
 19 form.

20 A. I'd like it to be
 21 written differently than that. And I
 22 don't know -- in terms of the author
 23 disclosure forms, I don't recall what
 24 those said.

25 BY MR. KRISTAL:

1 Q. Okay. Well, this was Inhalation
2 Toxicology, right --

3 A. That's correct.

4 Q. -- the journal?

5 MR. KRISTAL: I digress for a
6 moment given what you just said. I'm
7 going to mark as Exhibit 12 some
8 information about disclosure from the
9 Inhalation Toxicology Web site. I'm
10 sorry I don't have an extra copy but
11 let me hand that to you first.

12 (Exhibit 12 was marked for
13 identification.)

14 MR. SCHNEIDER: Actually you do
15 have an extra copy.

16 MR. KRISTAL: Okay. I thought it
17 felt a little thick when I handed it
18 to you.

19 MR. SCHNEIDER: What number is
20 that?

21 MR. KRISTAL: That is 12, I
22 believe.

23 BY MR. KRISTAL:

24 Q. Now, Inhalation Toxicology is the
25 journal to which all three of the Bernstein and

1 Holm articles that were generated from this
2 project were published, correct?

3 A. That's correct.

4 Q. Do you happen to have a copy of the one
5 that came out today?

6 A. I don't personally, no.

7 Q. Okay. I'll get it before the next time
8 we meet.

9 A. Okay.

10 Q. And this is the Inhalation Toxicology
11 home page, do you see that, the first page of
12 Exhibit 12?

13 A. I do.

14 Q. Don Gardner, the editor, is in Savannah,
15 Georgia. Do you know him?

16 A. I have never met him personally, no.

17 Q. Okay. Up top there are links where it
18 says home, all issues, current issue, do you see
19 that across the top under the journal name
20 Inhalation Toxicology?

21 A. I do.

22 Q. And there's a link for instructions for
23 authors, do you see that?

24 A. Yes, I do now.

25 Q. Okay. Have you -- before the articles

1 were submitted to the journal Inhalation
2 Toxicology did you look at the instructions for
3 authors?

4 A. No, I didn't.

5 Q. Was Bernstein in charge of doing that?

6 A. Yes.

7 Q. And so he charged you for that as well,
8 right?

9 A. I would think so.

10 Q. I mean it's part of his time, right?

11 A. Correct.

12 Q. Okay. And if you turn three pages in,
13 it says Inhalation Toxicology up top,
14 instructions for authors. Do you see that?

15 A. Yes.

16 Q. And there's a subsection, manuscript
17 preparation and there's a section of that in
18 terms -- called acknowledgements and declaration
19 of interest statements. Do you see that?

20 A. Yes.

21 Q. And what we read in the section, this
22 research was sponsored by a grant from
23 Georgia-Pacific, LLC, is a declaration of
24 interest statement, is it not?

25 A. I suppose it is.

1 Q. And if you look under editorial
2 policies, there's another subsection,
3 declaration of interest. Do you see that?

4 A. There's two declarations. Oh, there it
5 is. Okay. Yes.

6 Q. Now, if you turn to the next page under
7 manuscript submission, do you see that section?

8 A. Yes.

9 Q. The second paragraph says, quote, "All
10 submissions to the journal must include full
11 disclosure of all relationships that could be
12 viewed as presenting a potential conflict of
13 interest. If there are no conflicts of
14 interest, authors should state there are none.
15 This must be stated at the point of submission
16 within the manuscript after the main text under
17 a subheading declaration of interest and where
18 available within the appropriate field on the
19 journal's ScholarOne manuscript site," end
20 quote. Do you see that?

21 A. I do.

22 Q. And the Journal ScholarOne Manuscript
23 Site is where you submit an article online. Did
24 you understand that to be correct?

25 A. I did understand that, yes.

1 Q. So Inhalation Toxicology is requiring
2 full disclosure of all relationships that could
3 be viewed as presenting a potential conflict of
4 interest, correct?

5 A. Yes.

6 Q. We [sic] don't think that the
7 statement this research was sponsored by a grant
8 from Georgia-Pacific is a full disclosure of all
9 relationships that could be viewed as presenting
10 a potential conflict of interest, do you?

11 MR. SCHNEIDER: Object to the
12 form.

13 A. I don't.

14 BY MR. KRISTAL:

15 Q. And under that paragraph it says please
16 see our full declaration of policy -- strike
17 that -- a full declaration of interest policy
18 for further information, do you see that?

19 A. I do.

20 Q. And if you turn to the next page, under
21 acknowledgments and declaration of interest
22 section, do you see that?

23 A. Yes.

24 Q. It says, quote, "Declarations of
25 interest, however, refer to statements of

1 financial support and/or statements of potential
2 conflict of interest." Do you see that?

3 A. Not yet.

4 Q. It's the second paragraph under the
5 section --

6 A. Oh, second paragraph. Under the one
7 that starts declarations of interest? Is that
8 right?

9 Q. It says acknowledgements and
10 declaration of interest --

11 A. Yes.

12 Q. -- section. So that's what the
13 journal's telling authors, correct?

14 A. That's correct.

15 Q. And then it also says at the end of
16 that paragraph see declaration of interest
17 section below, right?

18 A. Yes.

19 Q. And if you turn to the next page,
20 again, it states that all declarations of
21 interest must be outlined, right?

22 MR. SCHNEIDER: Where are you
23 referring to?

24 MR. KRISTAL: At the top of the
25 page under declaration of interest

1 section. It's the next page after
2 the one we were just looking at.

3 MR. SCHNEIDER: Oh, okay. Thank
4 you.

5 A. Right. Yes.

6 BY MR. KRISTAL:

7 Q. And all declarations of interest were
8 not outlined in the one sentence, this research
9 was sponsored by a grant from Georgia-Pacific,
10 right?

11 A. No.

12 MR. SCHNEIDER: Object to the
13 form.

14 A. Not in that one
15 sentence. That's one of the reasons
16 why we decided to include myself as
17 an author.

18 BY MR. KRISTAL:

19 Q. So one of the reasons it was decided to
20 include yourself as an author was for what
21 reason?

22 A. To explicitly state that
23 Georgia-Pacific was involved in the study.

24 Q. Well, you certainly didn't disclose
25 that you were not in your regular employment

1 while working on this project.

2 A. I agree.

3 Q. If you turn to the next page -- two
4 pages -- actually, it's three pages. There's a
5 section that begins at the very bottom called
6 declaration of interest.

7 A. Yes.

8 Q. And in that section the next page
9 starts, quote, "It is the policy of all Informa
10 Pharmaceutical Science, to adhere in principal
11 to the conflict of interest policy recommended
12 by the ICMJE." Do you see that?

13 A. Um-hum.

14 Q. And Informa --

15 A. Yes.

16 Q. -- Pharmaceutical Science is the
17 company that owns Inhalation Toxicology as well
18 as other journals, right?

19 A. Yes.

20 Q. Okay. So the main company in the
21 context of instructions to authors in the
22 Inhalation Toxicology Journal is informing
23 potential authors that it is their policy to
24 adhere in principle to the conflict of interest
25 policy of the ICMJE, right?

1 A. I agree.

2 Q. And ICMJE is the International
3 Committee of Medical Journal Editors, right?

4 A. Okay. I didn't know that until today.

5 MR. KRISTAL: Okay. Let me just
6 mark as Exhibit 13 the ICMJE policy.

7 (Exhibit 13 was marked for
8 identification.)

9 BY MR. KRISTAL:

10 Q. Can you confirm me for me that ICMJE
11 stands for International Committee of Medical
12 Journal Editors?

13 A. Yes, it does.

14 Q. And Exhibit 13 is their disclosure
15 requirements, correct? Conflict of interest
16 disclosure requirements.

17 A. I believe so. I'm not sure where it
18 says that. There it is. Okay. Yes.

19 Q. Let's focus on Exhibit 13, the
20 International Committee of Medical Journal
21 Editors policy since we've just read that
22 Inhalation Toxicology authors that are
23 submitting manuscripts are supposed to adhere in
24 principle to their policy. Okay.

25 A. Um-hum.

1 Q. It starts out, quote, "Public trust in
2 the peer-review process and the credibility of
3 published articles depends in part on how well
4 conflict of interest is handled during writing,
5 peer review and editorial decision making," end
6 quote. Do you agree with that?

7 A. Yes, I do agree with that.

8 Q. The next paragraph continues, quote,
9 "All participants in the peer-review and
10 publication process must disclose all
11 relationships that could be viewed as potential
12 conflicts of interest. Disclosure of such
13 relationships is also important in connection
14 with editorials and review articles because it
15 can be more difficult to detect bias in these
16 types of publication -- publications than in
17 reports of original research," end quote.

18 Do you agree that the policy here is
19 that there must be disclosure of all
20 relationships that could be viewed as potential
21 conflicts of interest?

22 A. That's what it says here, yes.

23 Q. And the next paragraph says, quote,
24 "When authors submit a manuscript, whether an
25 article or a letter, they are responsible for

1 disclosing all financial and personal
2 relationships that might bias their work."
3 That's part of the policy as well, correct?

4 A. Yes.

5 Q. On the next page, fifth paragraph that
6 begins increasingly, do you see that?

7 A. Yes.

8 Q. Quote, "Increasingly individual studies
9 receive funding from commercial firms, private
10 foundations and government. The conditions of
11 this funding have the potential to bias and
12 otherwise discredit the research," end quote.
13 Do you agree with that?

14 MR. SCHNEIDER: Object to the
15 form.

16 A. I -- conditions of this funding.
17 Okay. Yes.

18 BY MR. KRISTAL:

19 Q. Well, that's certainly the policy --

20 A. Right.

21 Q. -- statement, correct?

22 A. That's -- that's what it mean. Yes.

23 Q. And the next paragraph says, quote,
24 "Scientists have an ethical obligation to submit
25 creditable research results for publication.

1 Researchers should not enter into agreements
2 that interfere with their access to all of the
3 data and their ability to analyze them
4 independently and to prepare and publish
5 manuscripts. Authors should describe the role
6 of the study sponsor if any in study design,
7 collection, analysis and interpretation of data,
8 writing the report and the decision to submit
9 the report for publication," end quote. Do you
10 see that?

11 A. I do.

12 Q. And that was not done for any of the
13 Bernstein publications that emanated from this
14 project, right?

15 MR. SCHNEIDER: Object to the
16 form.

17 A. Yeah. Other than me being
18 an author of the study, yes.

19 BY MR. KRISTAL:

20 Q. Well, you being listed as an author of
21 the study doesn't tell anyone that this was
22 litigation-driven research, right?

23 MR. SCHNEIDER: Object to the
24 form.

25 A. Other than by itself, that's

1 true.

2 BY MR. KRISTAL:

3 Q. If you go back to Exhibit 12, the
4 actual Inhalation Toxicology policy, picking up
5 from where we left off, Inhalation Toxicology is
6 informing potential authors, quote, "All authors
7 must disclose any financial and personal
8 relationships with other people or organizations
9 that could inappropriately influence (bias)
10 their work. It is the sole responsibility of
11 authors to disclose any affiliation with any
12 organization with a financial interest direct or
13 indirect in the subject matter or materials
14 discussed in the manuscript such as
15 consultancies, employment, paid expert
16 testimony, honoraria, speakers bureaus,
17 retainers, stock options or ownerships, patents
18 or patent applications or travel grants that may
19 affect the conduct or reporting of the work
20 submitted," end quote. Do you see that?

21 A. I do.

22 Q. And that was part of the policy of this
23 journal, right?

24 A. That is the policy.

25 Q. And the last paragraph in this section

1 reads, quote, "The intent of this policy is not
2 to prevent authors with any particular
3 relationships or interest from publishing their
4 work but rather to adopt transparency such that
5 reviewers, editors, the publisher and most
6 importantly readers can make objective judgments
7 concerning the work product," end quote. That
8 was Inhalation Toxicology's policy, correct?

9 A. Yes, that's correct.

10 Q. And in fact your contract for your
11 special employment as Georgia-Pacific litigation
12 consultant with Mr. Childs required you to
13 disclose any conflict of interest, right?

14 A. Yes.

15 Q. Do you intend to write or communicate
16 with Inhalation Toxicology to inform them that
17 the statement this research was sponsored by a
18 grant from Georgia-Pacific is not correct?

19 MR. SCHNEIDER: Object to the
20 form.

21 A. That hasn't been currently
22 discussed, no.

23 BY MR. KRISTAL:

24 Q. So you have no current plan to do that
25 although that might change.

1 A. That's a possibility.

2 Q. Now, the other article that came out in
3 2008 was the Brorby -- the Exponent folks'
4 article with you also as coauthor, correct?

5 A. That's correct.

6 Q. I'm going to mark as Exhibit 14 Brorby
7 and Sheehan, Berman, and Greene and Holm. The
8 title of the article is Recreation of Historical
9 Chrysotile-Containing Joint Compounds. Do you
10 see that?

11 A. Thank you.

12 Q. You're welcome.

13 (Exhibit 14 was marked for
14 identification.)

15 BY MR. KRISTAL:

16 Q. And this too was published in the same
17 journal, Inhalation Toxicology, correct?

18 A. Yes, it was.

19 Q. And the only disclosure made here was
20 quote -- in lower left-hand corner -- "This
21 research was primarily funded by
22 Georgia-Pacific, LLC, who has been in litigation
23 related to joint compound," end quote. Do you
24 see that, Mr. Holm?

25 A. Yes. I --

1 Q. You need to slow me down --

2 A. Okay. I'm sorry.

3 Q. -- because I didn't realize you were
4 looking at something. Take your time to find
5 what you want in your book --

6 A. Okay.

7 Q. -- however you want to do it.

8 A. Yes. I thought it was at the end but
9 it's up here. Okay.

10 Q. Okay. And who else funded the study?

11 A. No one else did. Well, Exponent had
12 some contribution I'm told.

13 Q. Well, what does that -- Exponent --
14 that Georgia-Pacific who was paying to do the
15 study and write the manuscript also paid for the
16 study?

17 MR. SCHNEIDER: Object to the
18 form.

19 BY MR. KRISTAL:

20 Q. I guess I don't understand what you're
21 -- strike that. This says the research was
22 primarily funded by Georgia-Pacific, right?

23 A. Yes, it does.

24 Q. That would indicate it wasn't
25 exclusively funded by Georgia-Pacific, correct?

1 A. That's -- that's how I would read into
2 it, yes.

3 Q. Okay. Well, who else other than
4 Georgia-Pacific funded this?

5 A. Yeah. I asked Greg Brorby about that
6 statement and he said that during the writing of
7 this manuscript we didn't pay for all the hours
8 that they actually worked on it so they put in
9 primarily funded.

10 Q. So Exponent worked some hours that they
11 didn't charge anybody for and therefore they
12 said that Georgia-Pacific was not the exclusive
13 funder of the research.

14 A. That's what they said.

15 Q. Okay. Is there any disclosure that the
16 preparation of the manuscript was funded by
17 Georgia-Pacific?

18 MR. SCHNEIDER: Object to the
19 form.

20 A. Not in those words,
21 no.

22 BY MR. KRISTAL:

23 Q. Well, it doesn't say anything about
24 that, right? It says this research.

25 MR. SCHNEIDER: Objection to the

1 form.

2 A. That is correct.

3 BY MR. KRISTAL:

4 Q. I'd like to review the article with you
5 in some detail if we can.

6 A. Sure.

7 Q. In the abstract you all wrote, quote,
8 "Little is known about actual human exposures to
9 chrysotile fibers that may have resulted from
10 the use of chrysotile-containing joint compounds
11 because few exposure and no health effect
12 studies have been conducted specifically with
13 these products," end quote. Do you see that?

14 A. Yes.

15 Q. Are you aware of a Mt. Sinai study that
16 was conducted in the 1970's regarding health
17 effects of asbestos-containing joint compounds?

18 A. I probably am. You would have to show
19 me the paper.

20 Q. Well, when you and the authors are --
21 there have been no health effect studies, did
22 you do any study whatsoever on asbestos joint
23 compound or were you specific to
24 Georgia-Pacific's asbestos joint compound?

25 A. There's -- that would be joint compound

1 in particular, not Georgia-Pacific's
2 exclusively.

3 Q. So do you know if that's a correct
4 statement that there was no health effect
5 studies on asbestos joint compound?

6 A. I would say that's a correct statement.

7 Q. It continues, quote, "Because limited
8 amounts of historical joint compounds are
9 available and the stability or
10 representativeness of aged products is suspect,
11 it is currently impossible to conduct meaningful
12 studies to better understand the nature and
13 magnitude of potential exposures to chrysotile
14 that may have been associated with historical
15 use of these products," end quote. Do you see
16 that?

17 A. Yes.

18 Q. On what basis were you saying there
19 were only limited amounts of historical joint
20 compounds available?

21 A. Well, from -- we've looked for historic
22 joint compound and the only that were available
23 is a small amount.

24 Q. Okay. And who is we that looked for
25 historical joint compound?

1 A. Counsel and also Exponent.

2 Q. Right. One of the tasks Exponent was
3 originally given at the beginning of the project
4 was to try to round up some old Georiga-Pacific
5 asbestos joint compound, correct?

6 A. That's correct.

7 Q. And they were paid \$70,000 to do that,
8 right?

9 A. I don't know what that specific task
10 cost.

11 Q. Okay. We'll look at the --

12 A. It's possible.

13 Q. -- invoices at some point. I
14 appreciate you might not know that exact number.

15 A. Right.

16 Q. What did counsel and/or Exponent
17 actually find?

18 A. We had some what was allegedly called
19 some Bestwall material that we had that was
20 historic in nature.

21 Q. Okay. Anything else?

22 A. Anything else what?

23 Q. My understanding is at the very
24 beginning of this project counsel and Exponent
25 were tasked with trying to find old

1 asbestos-containing joint compound.

2 A. Okay.

3 Q. And you've told us now that there was
4 something represented to be Bestwall asbestos
5 joint compound, right?

6 A. Yes.

7 Q. That was located.

8 A. Right.

9 Q. And I'm asking you was there anything
10 else located?

11 A. Yes. There was some dried Ready Mix
12 that also was obtained.

13 Q. Anything else?

14 A. No.

15 Q. Now, when you said it was represented
16 that this particular product was a Bestwall
17 asbestos joint cement, who was making the
18 representations?

19 A. Well, we had obtained it through
20 litigation from Longo, a plaintiff expert, and
21 there's no chain of custody or anything
22 available so what's represented is this can of
23 Bestwall so we believe that it's historic joint
24 compound.

25 Q. And it was a can of wet Bestwall?

1 A. No. It was dry.

2 Q. Okay. And what size can was that?

3 A. I've seen pictures of the can. I've
4 never held it in my hand. I'm not confident I
5 know.

6 Q. Do you know if it was a one gallon, a
7 five gallon...

8 A. I don't.

9 Q. Well, when you say a can, you're not
10 talking like a Campbell's Soup can, right?

11 A. No. It was -- if I'd have to estimate
12 it would be, you know, something like this.

13 (Indicating)

14 Q. Bigger than a gallon paint can.

15 A. Probably. Like I said, I've only seen
16 a picture of it with no real reference to it so
17 it's hard for me to ascertain that.

18 Q. And when you say dried Ready Mix --

19 A. I didn't say that.

20 Q. You didn't?

21 A. No.

22 Q. What else other than the Bestwall
23 product was found?

24 A. Oh. Dried, past tense, Ready Mix.

25 Q. That's what I just said.

1 A. You said dry and I was referring that
2 to dry mix.

3 Q. Oh, I see what you're saying.

4 A. Yeah.

5 Q. Got it. So this was a bucket of Ready
6 Mix that when you opened was dry as opposed to
7 being wet?

8 A. That's correct. It had been dried out.

9 Q. Did asbestos joint compound have a
10 shelf life of any kind? I mean after six months
11 you should throw it away and get another bucket?

12 A. I've never seen any of that kind of
13 specification, no.

14 Q. What is the basis for saying that this
15 -- quote, "The stability or representativeness
16 of aged products is suspect," end quote?

17 A. In the dry mix there was a casein
18 protein material that we thought could have
19 degraded over time.

20 Q. So in the dried Ready Mix can somebody
21 took a sample and found a component -- a casein
22 protein component of the Ready Mix that they
23 thought had degraded over time?

24 A. No.

25 Q. No. Can you tell again then because I

1 didn't understand.

2 A. Oh, it was in the formula sheet and our
3 wallboard -- or our chemists basically were
4 concerned that the casein product degraded over
5 that amount of time.

6 Q. Okay. So let me see if I'm
7 understanding. The statement that the stability
8 or representativeness of aged products is
9 suspect, does that apply to both dry asbestos
10 joint compound and Ready Mix, wet asbestos joint
11 compound?

12 A. Well, there are two different features.
13 We were concerned about the casein product and
14 dry mix and we didn't have that much to start
15 with. But the Ready Mix material that was
16 dried, the -- if we would grind that up or do
17 something with it and then reapply the water,
18 the chemical reaction doesn't work in the
19 reverse way so it would be like putting flour
20 and water together and putting it on the wall.
21 It wouldn't have the same properties as the
22 original.

23 Q. And did you do testing to verify that?

24 A. We --

25 Q. In other words, did somebody grind it

1 up, put water back in and then take a look at
2 it?

3 A. We didn't on the Ready Mix, no.

4 Q. Did you do that on the Bestwall?

5 A. We -- yes. We did apply Bestwall to
6 wallboard and sand it.

7 Q. And are those results published
8 anywhere?

9 A. The -- there's -- some of those results
10 -- this isn't in the sanded product. This is in
11 the -- just the dried product but those sanded
12 results are not published at this point in time.

13 Q. Okay. So the sanded results of the
14 historical asbestos-containing Bestwall product
15 that was located had not been published.

16 A. That's correct.

17 Q. And what gave someone cause to think
18 that the casein was degraded or would be
19 degraded?

20 A. It's like a milk-related product. It's
21 a natural protein and that was their concern.

22 Q. Well, when the analysis was done on the
23 Bestwall, was there any identification of a
24 degradation of that component?

25 A. We never did that test.

1 Q. But you could do that test, right?

2 A. I don't know what that test would be.

3 MR. KRISTAL: Okay. Why don't we
4 go off the video record for a minute.

5 THE VIDEO OPERATOR: The time is
6 4:05 p.m. Going off the video
7 record.

8 (Whereupon, a break was taken.)

9 THE VIDEO OPERATOR: Back on the
10 record. The time is 4:15 p.m.

11 MR. SCHNEIDER: All right. We
12 are together here in the deposition
13 of NYCAL litigation of Stewart Holm.
14 Mr. Kristal has announced that he has
15 completed this portion of his
16 examination for the day but he
17 intends to continue his examination
18 on subjects related to the topics in
19 the deposition notice and -- at a
20 subsequent time.

21 We told Mr. Kristal that June 7th
22 and 8th have been blocked out and are
23 available but Mr. Kristal didn't
24 understand that and doesn't have that
25 time available. We are going to

1 select another date and report back.

2 I would like the opportunity at
3 this time to ask a series of redirect
4 questions to Mr. Holm on a series of
5 topics that have been covered here
6 today. Plaintiffs object to that
7 procedure saying that they're in the
8 middle of their examination and it's
9 not appropriate for defense to be
10 able to do redirect examination at
11 this point.

12 We think that if the deposition
13 is going to be considered continuing
14 that there should be no use made of
15 the deposition, that it shouldn't be
16 cited until the defense has the
17 opportunity to ask redirect questions
18 and actually complete the transcript.
19 The parties are in disagreement about
20 that topic and we are reserving our
21 redirect examination until such time
22 as Mr. Kristal's examination
23 concludes totally, and at that point
24 we will conduct a redirect
25 examination and only at that point

1 will this deposition be complete in
2 our judgment so for the purposes of
3 being able to cite to it, use it in
4 the NYCAL litigation.

5 So with that objection and
6 reserving our redirect questions, we
7 will proceed to the next session when
8 it's scheduled pursuant to
9 discussions among counsel.

10 MR. KRISTAL: And when I had
11 said -- when we were discussing this
12 off the record is that I had no
13 present intent to use the transcript
14 but if we do use the transcript,
15 Georgia-Pacific can certainly
16 respond, A, as it just did in
17 whatever format they want. They can
18 get affidavits presenting what they
19 would be considering redirect or
20 there are ways to handle it. But
21 there's no procedure in New York in
22 the middle of an attorney's
23 examination of a witness for the
24 other side to ask questions. It
25 would be like we have multiple days

1 of plaintiffs' depositions and it's
2 like at the end of the first day the
3 plaintiff's lawyer saying I want to
4 get to ask my redirect or some
5 redirect questions before the next
6 session. It's just not something
7 that's sanctioned in the rules so we
8 don't need to argue about it. I
9 think it's a moot point in any event
10 and we can take it from there.

11 MR. SCHNEIDER: All right. Our
12 position is stated.

13 THE VIDEO OPERATOR: The time is
14 4:18 p.m. Going off the video
15 record.

16 (Deposition concluded at 4:18 p.m.)
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E R R A T A S H E E T

Pursuant to Rule 30 (e) of the Federal Rules of Civil Procedure and/or the Official Code of Georgia Annotated 9-11-30 (e) any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

I, the undersigned, STEWART E. HOLM, do hereby certify that I have read the foregoing deposition and that to the best of my knowledge said deposition is true and accurate (with the exception of the following corrections listed below).

Page_____ Line_____ should read:_____

Reason for change:_____

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7 Page_____ Line_____should read:_____

8 Reason for change:_____

9 Page_____ Line_____should read:_____

10 Reason for change:_____

11

12

13

14

15 Signature

16 Sworn to and Subscribed before me

17 _____, Notary Public.

18 This_____day of_____, 2011.

19 My Commission Expires:

20

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24

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C E R T I F I C A T E

G E O R G I A :

D E K A L B C O U N T Y

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 292 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

Pursuant to Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

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7 parties in the case.

8 This, the 10th Day of June, 2011.
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12 JENNIFER L. AMMERMAN, RPR, CSR 2656
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