

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS

3 BEAUMONT DIVISION

4 CALVIN FOSTER, ET UX

5 VS.

6 LONE STAR INDUSTRIES,
7 INC., ET AL

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9 This is the oral deposition of

10 KENNETH L. SCHEEL,

11 a Witness in the above-styled cause. The testimony

12 was taken at the instance of the Plaintiffs, on

13 September 25, 1984, at the offices of Orgain, Bell &

14 Tucker, 470 Orleans, Beaumont, Texas, pursuant to Notice.

15 Those persons present were as follows:

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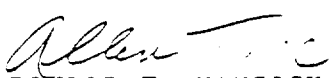
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S T I P U L A T I O N

IT IS STIPULATED AND AGREED BY COUNSEL
FOR THE PARTIES HERETO:

That the deposition of the Witness named
herein is taken pursuant to Notice attached hereto;

That the Witness may sign said deposition
before any duly authorized and acting Notary Public
in and for the State of Minnesota;

That all objections, other than those that
relate to the form of the question and responsiveness
of the answer, are hereby preserved and may be made
at the time any testimony herein is sought to be
offered upon the trial of this cause;

That this deposition may be used upon the
trial of this cause with the same force and effect
as if the applicable Federal Rules of Civil Procedure
with reference to the taking of the deposition and
return of same had been fully followed;

That the original transcript of this deposition
will be given to the attorney taking the same, and
that attorney will be responsible for filing the
original deposition with the Court, in the event
such act is called for by any party to this cause.

KENNETH L. SCHEEL,

having been duly sworn, testified as follows,

to-wit:

EXAMINATION BY MR. SWEARINGEN:

Q Would you state your full name, please.

A Kenneth Lawrence Scheel.

Q How do you spell your last name?

A S-c-h-e-e-l.

Q It's pronounced Scheel?

A That's correct, yes.

Q Mr. Scheel, I'm Tom Swearingen. I'm here to take your deposition today. You are here with your company lawyer, Mr. Whittenburg.

Have you had an opportunity to discuss with him what a deposition is and what it means and so forth?

A Yes, we have had that discussion.

Q Have you given a deposition before?

A No, I have not.

Q This is the first time in your life you have ever sat down and given a deposition, as far as you know?

A That's absolutely true, yes.

Q Where do you live?

1 Q Where are you from; you are a native of
2 where?

3 A Chicago, Illinois.

4 Q Mr. Scheel, I'm going to be asking you
5 some questions, and it's a fairly technical matter
6 that we're talking about. I'm not a very technical
7 person, particularly in your field. I may ask some
8 questions that you don't understand because I am
9 not making myself clear.

10 I would like to have the agreement with
11 you at the outset that if I ask a question that you
12 don't fully understand, please have me clarify it,
13 rephrase it, reask it or whatever, before you respond
14 to it. So, when we finish, we can assume that you
15 have answered the questions that you understood.
16 May we have that agreement?

17 A That's fine.

18 Q A housekeeping matter that I have to pay
19 attention to myself: And, that is, the fact that
20 I will try my best not to interrupt your answers,
21 and I would ask you that even though you may anticipate
22 the answer to my question, let me finish my question
23 before you attempt to answer it, because your deposition
24 will read a lot better; okay?

1 Q You do understand that you are under oath?

2 A Yes, sir.

3 Q Do you understand that the effect of that
4 oath is the same as it would be if you were in Federal
5 Court testifying before a Judge and Jury?

6 A Yes.

7 Q What is your occupation?

8 A Technical Services Manager for the Occupational
9 Health & Safety Products Division of 3M Company.

10 Q Run that by me one more time.

11 A The Technical Services Manager for the
12 Occupational Health & Safety Products Division of
13 3M.

14 Q How long have you held that position?

15 A Currently for the last three years.

16 Q Has your job responsibility in that position
17 always been the same, or has it changed since you
18 took that position?

19 A No, it has been the same.

20 Q Would you please tell the Jury, in as brief
21 a fashion as you can, what your job responsibilities
22 and functions are in this position with 3M.

23 A Certainly. My position as Manager of Technical
24 Services is to run a group that is currently six

1 information liaison between our OH&SP Laboratory
2 and our own Sales Marketing Departments plus our
3 customers.

4 I also operate as the technical liaison
5 between ourselves and our operating subsidiaries
6 in countries outside the United States.

7 Q Do I understand that answer to mean that
8 your function for this company extends worldwide?

9 A In my case, yes; that's true.

10 Q Now, you have mentioned that it is in the
11 technical field. That's a pretty broad term. Can
12 you be a little more specific about what kind of
13 technical advice or concern you have for your company?

14 A Sure. In general, I would say that the
15 best way to describe it is that anybody, including
16 our own sales forces for our Division, and any customer,
17 if they need to know how a respirator that is marketed
18 by 3M Company functions, what it can be used for,
19 what are its attributes, what are its limitations,
20 as you apply them to the job at hand that that individual
21 person is interested in, that is our function: to
22 advise our customers on what we believe is the proper
23 respirator to use.

24 Q Have you had six people in your group since

1 A No. It has gone from four at that time
2 to six presently.

3 Q When did it go from four to six, approximately?

4 A One year ago.

5 Q Where do you get your input? By that I
6 mean, do you - are you responsible in this Department
7 for performing research to gain the information to
8 tell your users about respirators that your company
9 sells?

10 A By "research", do you mean like researching
11 books and articles or ---

12 Q (Interrupting) Let me rephrase it. In
13 the interest of time, let me try to summarize what
14 I think you have told me.

15 A Okay.

16 Q Basically, my understanding is that you
17 have testified that you are the person who is primarily
18 responsible, from an occupational safety and health
19 viewpoint, by the title of your office, for consulting
20 with, advising, your customers, as to the safe practices,
21 the health practices and considerations in connection
22 with the use of your products.

23 Now, my question to you is: Where do you
24 get your information to pass on to your customers?

1 respirator can be used for certain things, is that
2 something that you know because you have investigated
3 it, or are you relying on a research division in
4 your company? Where do you get your information
5 to pass on to your customers?

6 A Okay. We get that from a variety of sources.
7 We get it from the general respirator community of
8 what is and is not practical and right and reasonable
9 for respirator use. We get it from literature, published
10 literature, that is commonly available to the industrial
11 hygiene community. And we also get it from in-house,
12 from 3M, if we need to, from consulting with our
13 own corporate industrial hygiene community that we
14 have at 3M.

15 Q Tell me about the corporate industrial
16 hygiene community at 3M. Who are they and where
17 are they and what do they call themselves?

18 A Who are they -- They are a group of people
19 that are not part of our Division. They are a staff
20 function in 3M Company that operate as staff industrial
21 hygienists to advise the various working divisions
22 of the company plus our manufacturing plants; you
23 know, operate as an industrial hygienist for that.

24 So, in a sense I guess they don't act much

1 industrial hygiene group. It is very similar to
2 that.

3 Q You have to help me, because I don't know
4 what large corporations do in this regard.

5 A They ---

6 Q (Interrupting) First, let me ask you this:
7 Do they call themselves a certain department or division?

8 A They are not a division. They are a staff
9 group. They are part of the Medical Department of
10 3M.

11 Q They are a staff group and a part of the
12 Medical Department. Are they located in one general
13 location?

14 A Yes, sir.

15 Q Where is that?

16 A In St. Paul, Minnesota.

17 Q How many of them are there to your knowledge?

18 A I really don't know how many total there
19 are.

20 Q Can you give me an estimate? With a large
21 corporation, I don't know if you're likely to have
22 1,000 industrial hygienists or two or three. I just
23 have no concept of that. Just give me your best
24 estimate.

1 just guessing, I would say a dozen, something like
2 that. There may be more.

3 Q Now, as I understand - and to make sure
4 that I understood your answer - in addition to furnishing
5 you information and, I assume, upon request from
6 you, they are charged with the responsibility of
7 managing industrial hygiene in your company's factories,
8 manufacturing locations, plants, et cetera; is that
9 correct?

10 A That is true, yes.

11 Q It is not their primary responsibility
12 to advise your customers?

13 A Oh, no, not at all; not at all.

14 Q That's yours?

15 A That is ours, yes.

16 Q How many manufacturing facilities are there
17 in 3M that manufacture respirators?

18 A Two. In the United States, you mean?

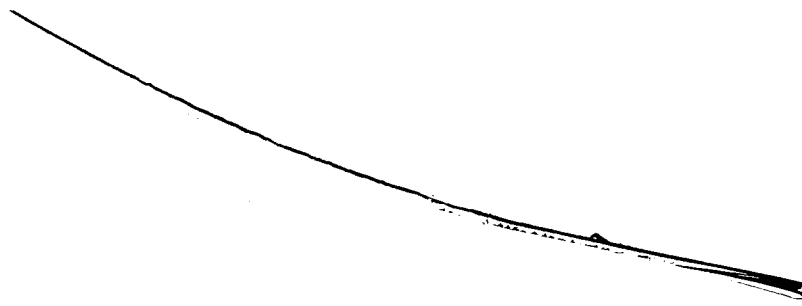
19 Q Yes.

20 A There are two.

21 Q Where are they located?

22 A Aberdeen, South Dakota; and Valley, Nebraska.

23 Q How many people work in the plant in Aberdeen,
24 approximately?



1 Q How about Valley, Nebraska?

2 A I would guess something less; 200, perhaps.

3 Q Do you have manufacturing facilities located
4 outside of the United States of America?

5 A For the entire corporation or for ...

6 Q For respirators.

7 A For respirators?

8 Q So that I don't have to say that each time,
9 I know that you work for a very large corporation.
10 But I am interested really in the respirator business,
11 and we will keep it to that.

12 A Okay. Just one.

13 Q Where is that located?

14 A Aicliff, England.

15 Q Do you know approximately how many people
16 work there?

17 A No, I do not.

18 Q Do those plants have industrial hygienists
19 that are assigned to that organization, or is all
20 of that work done through the office up in St. Paul?

21 A It's done from the office in St. Paul,
22 yes. They are assigned to operate out of those plants,
23 correct.

24 Q Is the manufacture of respirators a particularly

1 The reason that I ask that question. It
2 seems like you have two fairly small facilities that
3 make these things. You have by your estimate - and
4 I realize it is an estimate - 12 industrial hygienists
5 who are trying to oversee that.

6 MR. WHITTENBURG: I don't believe
7 that's what he said.

8 MR. SWEARINGEN: That's what
9 I'm trying to get to, Jo Ben. I'm
10 not trying to put words in his mouth.

11 (By Mr. Swearingen)

12 Q Surely these 12 people are not all in charge
13 of those two plants; is that right?

14 A Well, no, of course not.

15 Q They are in other divisions of your company?

16 A They are not in other divisions, no. They
17 are responsible for servicing other divisions of
18 the company.

19 Q Just so I will know, and as a matter of
20 curiosity: What are the divisions of 3M?

21 A You're asking me to name them by name?

22 Q Yeah. Just tell me. Let me tell you what
23 I'm trying to find out: I'm trying to find out what
24 3M does for a living. Give me some broad general

1 MR. WHITTENBURG: Tom, I think
2 that is irrelevant.

3 MR. SWEARINGEN: I don't, Jo
4 Ben. They may be in a related business
5 that may not be respirators but may
6 be real close. In fact, I don't know
7 what they do. I know that they make
8 tape and all kinds of junk.

9 (By Mr. Swearingen)

10 Q Just give me a general idea. That's all
11 I want.

12 MR. WHITTENBURG: I really don't
13 think that is relevant or material.
14 If you want to ask him if 3M is into
15 anything that might relate to respirators
16 or the sandblasting industry, that's
17 one thing. To ask him to name all
18 of the different divisions of 3M I
19 think is a waste of time.

20 MR. SWEARINGEN: I'm not asking
21 him to name all of the divisions of
22 3M. I don't think he can. He probably
23 doesn't know that.

24 (By Mr. Swearingen)

1 the health care area.

2 Q You are part of a group. What do you mean
3 by that?

4 A The company is structurally set up in
5 essentially four groups.

6 Q Maybe that's what I'm trying to ask you.
7 What are the four groups?

8 A The tape is one.

9 Q Tape. Health care?

10 A Health care is one. The electrical bit
11 is the third one, and the fourth one would be the
12 copy machines and that sort of thing.

13 Q Now, do respirators come under health care?

14 A Yes.

15 Q What type of abrasive does 3M sell?

16 A Sandpaper, grinding discs. My knowledge
17 of that is strictly thirdhand. I have never worked
18 for that part of the corporation.

19 Q I thought that you might have some connection
20 in your business with the fact that some of these
21 abrasives sold by your company require the use of
22 respirators when using abrasive grinding discs, for
23 example.

24 Does that overlap or have any interplay
with your respirator business?

1 A I have to ask you if you mean when ~~we~~ are
2 manufacturing those things inside or when they are
3 sold outside?

4 Q No. For example, an abrasive disc that
5 is sold by 3M may contain some instructional information
6 with it that says, "When you are using this disc
7 to grind, you should use a 3M respirator type so-and-so."

8 A Are you asking me if that's true, if that
9 is the case?

10 Q That's what I'm asking you generally.

11 A I have no knowledge of that. I don't know.

12 Q You have no idea about that?

13 A No.

14 Q Does your function as Occupational Safety &
15 Health Division - does it extend to these four areas
16 of the company, or does it only extend to the health
17 care part of the company?

18 A I don't know what you mean by "extend."
19 Say it again for me.

20 Q Do you give customers information about
21 the safe use of these electrical products?

22 A No. No.

23 Q Do you give customers information or advice
24 about the safe use of the tape products of your company?

1 Q Or the copy machines?

2 A No.

3 Q So, is it fair for me to understand that
4 your job is limited simply to one of these four areas,
5 which is the health care area?

6 A It is fair for you to say that it is limited
7 to our Division alone. Anything else in the health
8 care area I have nothing to do with.

9 Q It is limited to respirators alone? What
10 is your Division? I'm sorry.

11 A The name of it?

12 Q Yes.

13 A The Occupational Health & Safety Products
14 Division.

15 Q I think I'm just having a hard time asking
16 you questions.

17 You have given me four areas of your company:
18 One of them is called health care, and you told me
19 that respirators come in that part of the company.

20 A Occupational Health & Safety Products as
21 part of that section, yes.

22 Q Do you only concern yourself with respirators,
23 or are there other health care products from your
24 company that you are concerned with?

1 that I am concerned with.

2 Q Give me the breakdown, generally, of the
3 health care part of 3M, the corporate organization
4 or whatever you want to call it.

5 A It is generally divided up in the health
6 care side into two main groups - three, pardon me:
7 products that are in the dental area, and then ones
8 that are generically into medical products, and others
9 called surgical products. Those are the three groups
10 in the health care area.

11 Q Dental, medical ...

12 A And surgical, yes. In the health care
13 they are a subset underneath this whole generic health
14 care title that I gave you, that we are also a part
15 of.

16 Q Which one of these things are you part
17 of?

18 A We are not. We are, along with them, under
19 this whole umbrella of health care.

20 Q Does 3M have a Division called the Health
21 Care Division?

22 A No, it's a group. It's a segment of the
23 corporation. It is not a Division. It's a collection
24 of things.

Q Well, can you help me identify what that

1 section includes, sir. That's all I'm asking.

2 What is the health care business of 3M?
3 What products do you sell and where do you fit into
4 the organization?

5 MR. WHITTENBURG: You have asked
6 about five questions there.

7 MR. SWEARINGEN: I'm trying to
8 give him an idea as to what I want,
9 Jo Ben. I know we're dealing with
10 a big company, but I'm trying to boil
11 it down to something that I can relate
12 to with this man.

13 MR. WHITTENBURG: If you want
14 to know what he does, I think he can
15 tell you that. If you're trying to
16 find out about all of the other Divisions,
17 I still think that is irrelevant and
18 immaterial; but you can go ahead and
19 ask the questions. He's here because
20 you all asked for somebody to talk
21 about respirators, and he's here in
22 that respect. So ...

23 MR. SWEARINGEN: We're going
24 to talk about that, but I've got to

1 and where he fits into this gigantic
2 corporation. He's told me that they
3 have a health care group.

4 MR. WHITTENBURG: That's right.

5 (By Mr. Swearingen)

6 Q What can you tell me about who that is
7 and what that is, sir, in the way of products and
8 how you are involved in it?

9 MR. WHITTENBURG: Again, I don't
10 think that's relevant to what you
11 have asked us to provide a Witness
12 for.

13 MR. SWEARINGEN: It is relevant
14 to test his qualifications. I'm going
15 to ask him in a minute which one of
16 these things he has worked in and
17 what his employment history has been.

18 MR. WHITTENBURG: Why don't you
19 ask him that.

20 MR. SWEARINGEN: I'm going to
21 in a minute. Right now I want to
22 know something about the health care
23 business.

24 MR. WHITTENBURG: Ask him what

1 about it.

2 (By Mr. Swearingen)

3 Q Do I need to ask you more questions so
4 that you will see what I'm trying to find out?

5 A I don't think so.

6 Q I don't, either. Why don't you tell me
7 about it.

8 A Let me try to explain it to you this way:
9 You've got the four groups of the company that you
10 have written down. In the health care group, that's
11 a general large title of a large group. Think of
12 it as split into two parts. One side of it is what
13 people tend to think of as health care, the ones
14 I named: dental, medical, surgical type products.
15 The other side of it might be easier - maybe the
16 best way for me to say it to you is it is more what
17 people might say is safety-oriented, in that it contains
18 our Division - OH&SP - and product lines that are
19 like reflective highway signing, things of that nature.

20 Q Okay.

21 A There are some product lines in there that
22 are made - that firemen use to turn traffic lights
23 on and off as they are running through the city streets,
24 so that they don't run into pedestrians or cars,

1 of it. So, maybe that's the best way for me to describe
2 how that works.

3 Q That's all that I want to know. And in
4 that part, there is a part that deals with respirators?

5 A That's correct.

6 Q And you and the six people that work with
7 you are primarily interested in respirators only?

8 A Primarily, that's true; yes.

9 Q Is that right?

10 A Yes.

11 Q Do you have any connection with any other
12 products manufactured by your employer, other than
13 respirators?

14 A None, no.

15 Q The six people that are in your Department ---

16 A (Interrupting) Let me back up, because
17 you haven't asked that, and I don't want it later
18 on to be said that I answered that slightly wrong.

19 OH&SP doesn't make just respirators. We
20 make a couple of other products, too, that are not
21 respiratory protection products at all.

22 Q What are they?

23 A The reason that I'm saying that is because
24 we do deal with those also as technical services.

1 Q (Interrupting) Thinsulate insulation?

2 A Yes. It is used in ski jackets and things
3 like that. And we also make a material called Oilsorbent.
4 It's used for picking up oil off of water. So, yes,
5 my group -- We only have responsibility for those
6 products inside our Division mostly, which is respirators;
7 but we also have these.

8 Q Now we're getting somewhere. What percentage
9 of your time is spent on respiratory products, as
10 compared to Thinsulate insulation and Oilsorbent?

11 A Myself, personally, or the group?

12 Q Your Department.

13 A The Department?

14 Q Yes.

15 A Ninety-five percent.

16 Q These other two things take a very small
17 amount of your time; is that right?

18 A That is correct; yes, sir.

19 Q Tell me about the six people in your Department.
20 What are they? Are they people with your qualifications?
21 Are they secretaries, clerks, or what?

22 A No, they are Technical Service Engineers,
23 is their title.

24 Q What is a Technical Service Engineer?

^ You will have to define that for me a little

1 bit when you say that.

2 Q You used the term that they are Technical
3 Service Engineers. Tell me what a Technical Service
4 Engineer is, because I don't know.

5 A What he is or what he does?

6 Q Well, either one will give me the answer,
7 I guess. What is he or what does he do?

8 A What they do is the same - essentially
9 the same function that I told you that I perform,
10 other than the fact that from my point of view it
11 is the management of that group. But they are the
12 people who actually do the liaison work with our
13 customers.

14 Q Let's talk about your qualifications.
15 Just start out with me with your schooling and bring
16 me up in chronological order as to what your educational
17 advantages have been to qualify you to head up this
18 Division of 3M Corporation.

19 A Okay. First, I might say that I don't
20 head the Division at all. I am just part ---

21 Q (Interrupting) You are the Manager.

22 A --- of the technical services part of OH&SP.
23 I am not the head of the Division.

24 My schooling is that I have a Bachelor

1 University. Directly from there I came to work for
2 3M Company. Now, what is it you want to know past
3 there?

4 Q When did you get your degree?

5 A 1967.

6 Q Have you pursued any other educational
7 courses after your degree, special schools that you
8 have gone to at the request of your employer, seminars,
9 any other educational training to qualify you further
10 in a particular field with 3M Corporation?

11 A Yes, I have gone to seminars run by
12 3M's Education & Training. I have gone to several
13 of those over the years; mostly having to do with
14 management skills.

15 Q Did any of them have to do with respirators?

16 A No, sir.

17 Q Did you study respirators in college?

18 A No, I did not.

19 Q That's not part of getting a degree as
20 a chemical engineer, is it?

21 A No, it is not.

22 Q And you have not studied them since you
23 got out of college; is that right?

24 MR. WHITTENBURG: You mean

1 MR. SWEARINGEN: I said "studied
2 them", whatever that means to him.

3 A Formalized going to school, no. Yes, studying
4 how they work and what they do, certainly. I have
5 been doing that constantly since I have been working
6 in this Division.

7 (By Mr. Swearingen)

8 Q Give me an outline of your history, if
9 you will, please, sir, with the 3M Company; what
10 you first did, about how long you did it, what the
11 job involved, and where you moved to next.

12 A I started in 1967 as a Development Engineer,
13 New Product Development Engineer, for the Industrial
14 Tape Division of 3M. And it was doing just that:
15 developing new pressure sensitive tape products.

16 I moved from that, after approximately
17 a year and a half's time, into the technical service
18 group of the Industrial Tape Division.

19 Q While you were in the New Products Department
20 for a year and a half, were you responsible for the
21 design or development of any new products?

22 A Yes, that's what I said: It was new product
23 development.

24 Q Did you develop any new products yourself?

25 A Yes, I did

1 Q What were they?

2 A One was called a preservation tape. It
3 is used by the military for like sealing up cars
4 and tanks and things when they put them in the desert,
5 so that they would not corrode, and they could be
6 refurbished if they needed them.

7 The other one -- There were two others.
8 One was a protective tape that is used to put on
9 sheet steel to keep it from getting scratched and
10 marred as it is transported from warehouses and things.
11 And the last one was a - I guess the best way to
12 describe it to you is you have seen the labels that
13 are tires when you go into a gas station or a tire
14 store that say what size the things is. I designed
15 one of those, a label type tape that goes on a tire.

16 Q Did any of that work - either directly
17 or indirectly - have anything to do with respirators?

18 A Not at all.

19 Q You were there a year and a half?

20 A Approximately, yes.

21 Q I'm sorry to interrupt you, but what was
22 your next job?

23 A Then I moved to the technical services
24 group of the Industrial Tape Division.

Q What did you do in that group?

1 A In terms of advising customers on more
2 or less the same thing I described as a job function
3 in OH&SP. It is recommending the proper pressure
4 sensitive tape for some application that a customer
5 has, when they didn't know up front just from a catalog
6 what was the obvious choice, what would be the best
7 thing to use.

8 Q I assume that you worked closely with the
9 Sales Division in that capacity; is that right?
10 You are not a salesman, but you are in effect giving
11 salesmen information that they need to sell a customer;
12 is that right?

13 A Yes, that's correct. We do work closely
14 with them.

15 Q How long were you in that?

16 A It was a little over two years, I would
17 guess.

18 Q We are up to about 1970 or 1971?

19 A Yes.

20 Q Where did you go from there?

21 A I then went to the International Division
22 of 3M Company as essentially - let's say a Process
23 Engineer, involved in technology transfer from the
24 U.S. company to our subsidiary companies overseas.

How do you transfer information to overseas?

1 A The 3M subsidiaries.

2 Q Where are they locted?

3 A All over the world.

4 Q Are any of them located in Red China or
5 any Communist countries?

6 A Not at that time, no.

7 Q Are they now?

8 A We do have a trading agreement with Mainland
9 China; that's right.

10 Q So, your company feeds information to Red
11 China; is that right?

12 A No. No, they don't.

13 Q They don't?

14 A No.

15 Q It sounds like it.

16 A We send it to our subsidiary operation,
17 which is ---

18 Q (Interrupting) How long ---

19 MR. WHITTENBURG: (Interrupting)

20 Wait! Don't interrupt him and don't
21 ask those kinds of questions, or we're
22 going to stop this.

23 MR. SWEARINGEN: I have a right
24 to know.

1 have a right to know that.

2 A Remember! I told you that we send it to
3 the 3M personnel and to the 3M subsidiary. We are
4 not giving it to the countries in which we operate.

5 Q How long did you do that job?

6 A Approximately one year.

7 Q Did that have anything to do with respirators?

8 A Nothing.

9 Q Did you send any respirator information
10 to any of your foreign subsidiaries?

11 A No, because my job had nothing to do with
12 respirators; never did.

13 Q What was your next job?

14 A Exactly the same function as I just described
15 to you, except for the Commercial Tape Division of
16 3M Company.

17 Q And that was an international job?

18 A Yes.

19 Q How long did you do that?

20 A It was less than a year; eight or nine
21 months.

22 Q It had nothing to do with respirators?

23 A Nothing.

24 Q What was your next job?

I then became the Technical Supervisor

1 of the Commercial Tape Division.

2 Q Was that an international job or just a
3 national job?

4 A It was not international. It was strictly
5 United States.

6 Q How long did you do that?

7 A About two years, maybe a little less.

8 Q We are up to about '73 or '74, I guess.

9 A It should be about '74, roughly, yes.

10 Q What did you do then?

11 A I went back and became the International
12 Manager for the Commercial Tape Division.

13 Q How long were you that?

14 A Until the middle of 1976. So, it would
15 have been ...

16 Q About ten years?

17 A Yes, a little less than that.

18 Q Nothing to do with respirators?

19 A No.

20 Q What was your next job?

21 A The next job was to manage the soft goods,
22 new product development.

23 Q And that was in about 1977?

24 A '76.

Q 1976?

1 A Uh-huh.

2 Q How long did you hold that job?

3 A About a year and a half.

4 Q Tell me a little bit about what that job
5 was. You told me it was the first job you had that
6 dealt with respirators.

7 A That's correct, yes.

8 Q I notice from your history that most of
9 your experience was in the pressure tape area. You
10 had at that point, from '67 until 1974 - you had
11 about seven years experience in your company's business
12 of pressure tapes; is that correct?

13 A That's true, yes.

14 Q Any particular reason that you changed
15 major lines of products?

16 A I'm sorry, any reason I did what?

17 Q That you changed from one major line of
18 product to another.

19 A It was certainly just job opportunities
20 of moving inside the company.

21 Q Was that by your choice or the choice of
22 your company, that you changed from the pressure
23 tape business to the respirator business?

24 A Both. I was asked to do it, and I did

1 Q When you went to work in this new department,
2 what was your position there?

3 A Technical Manager in charge of a group,
4 whose job was new product development for respirators;
5 software for respirators.

6 Q It seems strange to me that they would
7 take a person that was unfamiliar with respirators
8 and put him in charge of developing new respirator
9 products. Instead of moving someone up through that
10 line, they took someone out of the pressure tape
11 line and put you in charge of that. That just strikes
12 me as being unusual. Is there any explanation for
13 that?

14 A It's not unusual at all in the 3M Company.
15 What I was hired to do was to manage a group of people
16 who were very well versed in the development of new
17 products or respirators. The function that I was
18 to perform was a management function. I was not
19 to myself, personally, develop a respirator.

20 Q Since you got out of the New Product Division,
21 has your work been primarily personnel management?

22 A Since when?

23 Q Well, you were in the New Products Division
24 of tapes, and you developed several new tapes as

a New Product Engineer, or whatever you call yourself

1 I assume that that was a hands-on, in-the lab, or
2 whatever deal where you did that.

3 Your other jobs seem maybe to be more of
4 the type that you have just described, where you
5 have relied on other people with super technical
6 knowledge, and you managed the personnel to accomplish
7 a certain objective; is that true?

8 A Yes, from the point of view that that is
9 what I did was manage a group that has the real technical
10 knowledge. And my objective was to direct them in
11 their work. And, of course, naturally, I have to
12 understand what they're doing.

13 Q And that is true now. I mean, that has
14 been continuously true for you since you developed
15 your new products in the Tape Division in your first
16 year and a half with the company. Your primary work
17 since that time has been the guidance and the management
18 of a group of people to accomplish certain objectives;
19 is that right?

20 A No, not exactly. The first time that I
21 was in management for a group of people would have
22 been when I was in the Commercial Tape Division as
23 the Tech. Service Supervisor. Before that it was
24 always myself, you know, doing the hands-on work.

25 Q And that would have been in about 1973?

1 A Yes, about that.

2 Q So, since 1973 to 1984 your job has been
3 primarily to direct a group of people that you felt
4 like had superior technical knowledge to you. But
5 you were more or less trying to get that personnel
6 going in the right direction to accomplish a certain
7 objective; is that right?

8 A A little bit. I would say that I would
9 not necessarily say superior technical knowledge
10 to me in all instances, except for the time, let's
11 say, when I first came into the group, you know,
12 for respirators. Obviously, then, true, because
13 I had not had experience with them before. But now
14 I would not say that was the case at all.

15 Q Well, you used those words awhile ago,
16 and I assumed that that's what you meant. I was
17 trying to clear that up.

18 When you took over as Technical Manager
19 of the soft goods, New Product Development, is that
20 only respirators or are there other things technically
21 under the definition of soft goods?

22 A No, it is only respirators.

23 Q What did you do at that time to educate
24 yourself about this new field of endeavor of yours?

25 A Primarily what I had to do was to become

1 familiar with filtration, how it works in terms of
2 gases and vapors and particulates. It essentially
3 is the same sort of thing that you learn in chemical
4 engineering.

5 Q Did you do this by self-study?

6 A Yes.

7 Q Did you have technical people available
8 to you that had superior knowledge at that time to
9 yours?

10 A Yes.

11 Q Who were they and what did they call themselves?

12 A They were people in my group, these development
13 people that had been working on respirators previous
14 to my appearance in OH&SP.

15 Q Can you give me some feel for how many
16 people that you are talking about? Did you have
17 one or two people to go to or 100?

18 A No, it was more like about eight or nine.

19 Q Now, when I say what were they, I don't
20 know what they are. Are they engineers or industrial
21 hygienists? What do they call themselves, the people
22 that you went to to gain information about respirators?

23 MR. WHITTENBURG: Go ahead and
24 answer, but you are asking him a bunch
25 of questions as to what they call

1 themselves. They might call themselves
2 a lot of different things. If you
3 are asking for their educational
4 background, I'm sure that he can probably
5 give it to you.

6 MR. SWEARINGEN: Either one.

7 A The people that were directly under my
8 supervision were primarily chemists and engineers.
9 The industrial hygiene people that we talked about
10 a long time ago, I would talk to them if I had questions
11 of them. I don't know what their backgrounds were,
12 specifically, other than they have degrees in industrial
13 hygiene, working in the group. Previous to that,
14 I don't know if they were chemists or biologists
15 or what.

16 Q Were all of the people available to you
17 at your request to help you learn your new field?

18 A Yes.

19 Q Is there any particular person that maybe
20 you relied on more than others who was more experienced,
21 an older long-time employee? Is there any particular
22 person with the 3M Company that today you attribute
23 the fact, "Well, that person is really the one that
24 got me into respirators and taught me the ropes"?

25 A Not really, no.

1 Q You cannot identify anyone?

2 A Not like that, no. I used a whole raft
3 of people to gain information from.

4 Q Who was your predecessor in that job?

5 A His name was -- I don't remember, sir,
6 because I didn't know him. I don't recall.

7 Q You didn't get any input from him, apparently,
8 before you took the job, did you?

9 A No, I did not.

10 Q Did you ever meet him?

11 A I met him once, yes.

12 Q Just in a casual passing conversation or
13 whatever?

14 A That's basically right. That's why I can't ...

15 Q You never had the opportunity to sit down
16 with the guy and say, "Tell me everything about this
17 business so that I can take over and fill your shoes"?

18 A No, I did not do that.

19 Q Did he get fired or was he promoted or
20 what?

21 A No, he took a job in another Division.

22 Q Do you know why?

23 A No, sir, I don't.

24 Q Was it for unsatisfactory services?

1 didn't know why.

2 A I don't know.

3 MR. SWEARINGEN: I just thought
4 I might refresh his memory a little
5 bit.

6 A No, I have absolutely no knowledge why
7 he left and went to another Division. I couldn't
8 tell you.

9 Q You have been unable to identify any particular
10 people that helped you learn the ropes in this business.
11 Can you identify any particular material, literature,
12 courses, studies, anything that you can tell the
13 Jury or tell me that you really feel like is the
14 thing that helped you learn about respirators?

15 A Yes, things like I took John Pritchard's
16 course.

17 Q Who is John Pritchard?

18 A John Pritchard is a consultant in industrial
19 hygiene that ran -- I believe he still does. At
20 the time he was running a respirator course.

21 Q Can you tell me when you took that course?

22 A Yes, it was early on; so it was in 1976
23 sometime.

24 Q Where did you take it?

25 A It was up in St. Paul. He gave it.

1 you referred to at that time to learn about it?

2 A Yes.

3 Q Can you give me a list of them?

4 A They are ---

5 Q (Interrupting) Let's back up a minute.

6 Let me establish this if I can.

7 Is it fair to say - and I'm not trying
8 to put words in your mouth - that at that time you
9 really didn't know anything about respirators when
10 you took the job?

11 A When I took the job in OH&SP originally?

12 Q Yes.

13 A That's true. No, I did not.

14 Q Nothing other than what an engineer or
15 a chemist might know from his general education about
16 the principles involved in a respirator; is that
17 correct?

18 A Yes, although that's quite a bit, knowing
19 what the principles are involved.

20 Q I appreciate that. Other than that you
21 have had no experience or knowledge?

22 A No, other than that.

23 Q I'm sorry?

24 A I said other than that, that's right.

25 Q You told me that one of the early things

1 you did was take John Pritchard's course

2 A Uh-huh.

3 Q Did it last a day or two; do you remember?

4 A Two, I believe.

5 Q Two days?

6 A Yes.

7 Q Sort of in chronological order, if you
8 don't mind - and I'm sure that you do recall because
9 it was your learning experience about respirators --
10 You went from John Pritchard's course to what? I
11 mean did you start buying books?

12 Just tell the Jury what course you took
13 to bring you to your knowledge today.

14 A Bringing me to my knowledge today?

15 Q Right.

16 A Well, I would have to split that into two,
17 because, remember, in the beginning it had to do
18 with the development of respirators. That was learning
19 about the -- Getting textbooks, articles, pamphlets,
20 things you get out of the literature that tell you
21 how particulate respirators and gas and vapor respirators
22 function, how they physically work. I'm talking
23 about the filter media now or the filter absorbent
24 media.

25 Q There are two areas. Tell us about the

1 now.

2 Your company had no existing written materials
3 to assist you or any other employee, for that matter,
4 about their past experience or knowledge that they
5 had accumulated over the years about how to develop
6 new respirators, did they?

7 A Let me back up. When you phrase it that
8 way, yes, there are records that are kept. You know,
9 people write reports. You can go back and see how
10 experiments came out that were run on things. All
11 of that is there, if you want to read it, from whatever
12 exists, you know. It can range from a little to
13 a lot, depending on the program. That's true in
14 a corporation like 3M. They keep records of what
15 has been done in the past - to some extent, anyhow.

16 Q I'm going to ask you a very simple question,
17 and it may not be technically correct:

18 It seems to me that when you took that
19 job and you walked in, your first day on the job,
20 that you may have done what I think I would do; and,
21 that is, go and say, "Fellows, where can I get my
22 hands on some company literature, some company
23 information, something to tell me about this new
24 job that I have?" Did you do that?

25 A No, because that's not what I would do

1 at all, and it's not what I did do. Remember, my
2 job was to be a manager of that group. So, the first
3 thing ---

4 Q (Interrupting) Now, wait a minute!

5 MR. WHITTENBURG: No. You let
6 him finish.

7 MR. SWEARINGEN: I'm just trying
8 to get him straight. I'm not talking
9 about personnel management.

10 MR. WHITTENBURG: You're trying
11 to get him to say what you want him
12 to say. If you don't let him answer
13 the question, then we're just going
14 to stop the deposition.

15 (By Mr. Swearingen)

16 Q Answer the question.

17 A As I said, my job was to be the manager
18 of the group. So, therefore, when I walked in, I
19 didn't need to have people who were engineers, development
20 engineers, hand me a book on personnel management,
21 because they don't know anything about that. That's
22 not their job. What I do is walk in and find out
23 and sit down and schedule meetings. And I had them
24 tell me and brief me about what their projects were,
25 how they were doing and where they were in them and

1 what their time schedules were for the development
2 of the project that they had at the time.

3 Q John Pritchard's course didn't have anything
4 to do with personnel management, did it?

5 A No, not at all.

6 Q So, I don't think I'm out in left field.
7 I'm talking about learning about respirators.

8 What is the first thing you did when you
9 took the job in the way of discovering your company's
10 documented history in writing?

11 What was given to you to give you the benefit
12 of their past experience, their past efforts, their
13 knowledge of the state of the art of respirators
14 when you took the job, if anything? If it was nothing,
15 just tell me that it was nothing.

16 MR. WHITTENBURG: Are you talking
17 about written materials or his talking
18 to the people that he was working
19 with?

20 MR. SWEARINGEN: I'm talking
21 about written materials.

22 A Okay, written materials. I asked for and
23 received the records of the experiments that had

1 Q Is there a name for that? Is it kept under
2 a certain file or name or whatever?

3 A No, they are just reports. Project reports,
4 I guess you would call them.

5 Q You asked for the project reports on respirators
6 that had been done in the past.

7 A Sure. Yes. That's correct.

8 Q Did you receive some?

9 A Yes, I believe I did.

10 Q Can you identify the ones that you received?

11 A Not anymore, no. I don't remember.

12 Q If you went home today and made the same
13 request - "I want to see the project reports that
14 were available to me when I took this job back in
15 1976" - could they give them to you?

16 A I would have to find out by going back
17 and asking.

18 Q Is there any problem for you to do that,
19 if I ask you to do that and your company's lawyer
20 has no objections to it?

21 A You would have to ask Jo Ben about that.

22 MR. SWEARINGEN: Do you have
23 any problem with that, Mr. Whittenburg?

for him to go back and

1 made available to him when he took
2 this job in 1976. I would like to
3 see them so that I can examine them
4 and reproduce them.

5 MR. WHITTENBURG: Well, subject
6 to their being mostly irrelevant to
7 what we are talking about today --
8 As I understand it, they were project
9 reports of what everybody in the lab
10 or wherever were working on back then.
11 I don't think that there would be
12 a problem, if you can identify what
13 it was that they were working on then.

14 MR. SWEARINGEN: Well, let's
15 ask him what they were relevant to.
16 I assumed that they were relevant
17 to the development of respirators.

18 (By Mr. Swearingen)

19 Q What were these project reports - what
20 did they address themselves to, to your recollection?

21 A Which products or -- Define it for me a
22 little better. That's a very broad question.

23 Q I know that it's broad. It's a broad subject,
24 so that requires broad questions.

1 information to help you learn about respirators from
2 your employer, I want to know what they gave you.
3 You told me that they gave you some project reports.
4 Your lawyer has said that he doesn't know if they
5 are relevant to this lawsuit or not. You can help
6 us there.

7 Were they project reports about the development
8 of respirators by your company?

9 A Yes, that's what they would have been.

10 Q Can you tell me about how many of them
11 there were.

12 A No, I don't remember.

13 Q Did you read them?

14 A The ones I requested, yes, I read them.

15 Q How long did it take you to read them?

16 A You can read them in a day.

17 MR. WHITTENBURG: Each one?

18 THE WITNESS: Each one, yes.

19 (By Mr. Swearingen)

20 Q Did you request those things in writing?

21 A No.

22 Q Can you give me an estimate as to whether
23 there were three or four or thirty or forty? How
24 many did you get in response to your request?

1 there.

2 Q I assume that those ten project reports
3 related only to work done by your company and not
4 other outside people; is that correct?

5 A Yes, that's true.

6 Q What other written materials did you receive
7 to learn about your company and its business in the
8 manufacturing and developing of respirators, if any?

9 A In the manufacturing and development of
10 respirators and that subject alone?

11 Q Let me tell you for purposes of this deposition
12 I am not particularly interested in your work as
13 a personnel manager. Your lawyer presented you today
14 as a person from 3M who knows all the technical
15 information about the respirators that you make.

16 MR. WHITTENBURG: No, that's
17 not right.

18 (By Mr. Swearingen)

19 Q In particular, the 8710 and 8500; is that
20 right?

21 MR. WHITTENBURG: No.

22 MR. SWEARINGEN: Tell me again
23 what he is presented for.

24 MR. WHITTENBURG: Yes, he is.

1 8710 and the 8500, the respirators
2 that are involved in this case. This
3 man is Manager of the Technical Services
4 Division, and he has been presented
5 for that purpose. Now, I believe
6 that if you question him, you will
7 find that he has expertise with respect
8 to those respirators; but he also
9 has other expertise, too. He is presented
10 for what he is.

11 MR. SWEARINGEN: A personnel
12 manager? I am not interested in personnel
13 management practices.

14 MR. WHITTENBURG: Tom, if you
15 don't want to ask him about that,
16 you don't have to. But part of his
17 job is personnel management. So,
18 you know, if you don't want to know
19 about that, that's fine. If you want
20 to know about the other, then ask
21 him about the other. You haven't
22 asked him about the other yet.

23 MR. SWEARINGEN: I'm going to.

24 MR. WHITTENBURG: Fine.

1 (By Mr. Swearingen)

2 Q Sir, in your Department right now - and
3 I forget what it is - you are the Technical Services
4 Manager of the Occupational Health & Safety Products
5 Division; is that correct?

6 A That's correct.

7 Q Are there people presently in your Department
8 that have superior technical knowledge about the
9 8710 and the 8500?

10 A Superior technical knowledge?

11 Q Yes, sir.

12 A I'm going to have to ask you to define
13 "technical". Do you mean technical in terms of ---

14 Q (Interrupting) All right. I'll explain
15 it to you.

16 A Okay.

17 Q We have talked for 30 minutes or an hour
18 about how your job has been both technical at times
19 and at other times primarily managerial or personnel
20 management, so to speak.

21 A Yes.

22 Q As between those two - that's a distinction
23 I'm trying to draw - you have told me that up until
this date, for the last 10 years with this company,

1 management. And you said it yourself in response
2 to one of my questions - you said "taking people
3 who have more technical expertise than I do and directing
4 them to a certain company objective." Now, that
5 is true, is it not?

6 A No, sir. I never said "more technical
7 expertise than me." I said "people with technical
8 expertise," if I remember correctly.

9 Q We can read your deposition.

10 A I think that's what I said.

11 Q Well, let me rephrase the question.

12 Are there people in your Department right
13 now that work under your direction that have more
14 technical knowledge of the 8710, about its development,
15 research that went into it, and what it is today,
16 and the 8500, than you have?

17 A In my technical service group, no; that
18 wouldn't be true.

19 Q You have at least as high or higher knowledge
20 technically than anyone in your group?

21 A In technical service, yes; that's true.

22 Q Is there anyone in any other Division of
23 your company -- You keep saying in the technical
24 service, technical service -- Is there anyone in

1 technical knowledge about the research and development
2 and the use of the 8710 and the 8500 than you have?
3 Do you understand that you have been brought here
4 to be the man that has the most? I really want to
5 know if you are or not.

6 MR. WHITTENBURG: He was not
7 brought here as the man that had the
8 most.

9 MR. SWEARINGEN: He wasn't?

10 MR. WHITTENBURG: No.

11 MR. SWEARINGEN: Then who has
12 the most?

13 MR. WHITTENBURG: What do you
14 want, Tom? I mean, you have asked
15 different questions ---

16 MR. SWEARINGEN: (Interrupting)
17 It's very obvious what I want, Jo Ben.
18 Does anybody here misunderstand what
19 I want?

20 MR. WHITTENBURG: Do you want
21 to take a show of hands? You know,
22 I'll help you, if you want me to.
23 There are people in research and
24 development in the lab, and they have

1 THE WITNESS: Sure.

2 MR. WHITTENBURG: And you work
3 with them.

4 THE WITNESS: Yes.

5 MR. WHITTENBURG: As a liaison
6 between them and the marketing people?

7 THE WITNESS: That's correct.

8 Yes.

9 MR. WHITTENBURG: Does that give
10 you any idea?

11 (By Mr. Swearingen)

12 Q My question is very simple, sir, and I'm
13 not worried about Mr. Whittenburg understanding it.
14 I'm worried about you understanding it.

15 All I am asking you, sir, is do you know
16 of a man, a living and breathing human being who
17 works for 3M Corporation, that knows more about the
18 research, development and the use of the 8710 respirator
19 and the 8500 respirator than you do?

20 A Research, development and use of that product
21 in the field; someone that knows more about that
22 than I do?

23 Q Yes.

I would say not, not covering that whole

1 Q I'm not talking about just your Department
2 and Division, but the whole company.

3 A In the rest of the company I couldn't tell
4 you. I have no idea.

5 Q That's fair enough. You are the man that
6 I want, if that's true; okay?

7 A Yes.

8 Q What material did you obtain to educate
9 yourself about respirators, besides that furnished
10 to you by Mr. Pritchard and the project reports that
11 you ordered and were furnished?

12 A There's - the titles, I can't remember;
13 but they are industrial hygiene books that you can
14 buy. They are, I believe, standard works - principles
15 of industrial hygiene books.

16 Q Did you buy any books?

17 A I personally did not buy them. They are
18 owned by the company. We order them, what we need.

19 Q Did you order some books? Did you call
20 the purchasing agent and say, "I want these books"?

21 A They were already there.

22 Q Do you remember the names of any of them?

23 A They were industrial hygiene texts. No,
I don't remember the titles of them.

1 hygiene textbooks that relate to respirators to your
2 knowledge?

3 A I don't know.

4 Q Can you name any author for me of an industrial
5 hygiene textbook that specifically relates to respirators?

6 A Specifically relating to respirators, no,
7 I cannot.

8 Q Not one author?

9 A That's correct, sir, not one.

10 Q These books that your company had available
11 to you, these industrial hygiene textbooks, did you
12 read any of them?

13 A Yes, the part on respirators.

14 Q Any other written information that you
15 obtained to educate yourself about respirators?

16 A The health standards as they existed from
17 OSHA, what they required in respiratory protection.
18 I had to become familiar with the NIOSH criteria
19 documents as they might apply to our respirators.

20 Q Did you, in fact, read these documents
21 and familiarize yourself with them, or did you ask
22 someone to do it for you and tell you about them?

23 A As necessary, I read them myself.

Q Did you request or direct in writing any

1 for you? In other words, did you sit down with John
2 Doe and say, "John, run me a research on OSHA and
3 NIOSH regulations and send me back a report on how
4 they apply to us"?

5 A No, I never did that.

6 Q Did you do that as to any area of inquiry;
7 that is, direct someone under your supervision to
8 do a study or research for you and report back to
9 you?

10 A Yes, I did several times; yes.

11 Q In what areas did you do that?

12 A I can remember specifically having a summary
13 done for me; and, therefore, also for anybody else's
14 use on the noise standard that OSHA was putting out.
15 It doesn't have to do with respirators, unfortunately.

16 Q Did you do that when you had taken this
17 new job?

18 A No, that was only two or three years ago.

19 Q I apologize, but I'm still back in your
20 educational process. I'm back when you first took
21 this job in 1976, so we can limit the inquiry to
22 that.

23 Did you do any of that at that time; did
you have anyone give you a summary or do any research

1 A Yes, because on a monthly basis they would
2 write summary reports of what they had accomplished
3 that month. So, yes, I did.

4 Q My question isn't clear to you or something.
5 I'm not just talking about periodic summaries of
6 work done. I'm talking about where you requested
7 a certain individual to study, research or gather
8 information for you and report back to you about
9 matters relating to respirators in your effort to
10 become educated.

11 A No, not in that sense. I would go find
12 the material where it was and read it myself.

13 Q You have mentioned the textbooks, the courses,
14 the company reports that we talked about earlier.

15 Was there any other written information
16 that you went to and read, yourself?

17 A I think I said the NIOSH materials, the
18 OSHA regulations. Those are the things that I went
19 and looked for.

20 Q Now, would it be fair to say that other
21 than those things, you did not read anything else
22 in connection with your efforts to learn what you
23 felt like you needed to know about respirators?

24 A No, sir, I did not, because it was -- Are

1 Q Yes.

2 A Because that was development, and that's
3 in-house learning processes of the proprietary processes
4 on how we build our respirators, to make filter media
5 and to make the whole thing. That's an internal
6 type learning which would only be available to people
7 inside our Division.

8 Q Mr. Whittenburg keeps referring in this
9 deposition to what you learned from other people
10 by word of mouth, what they told you.

11 So, give the Jury the benefit of what you
12 can remember in your efforts to educate yourself
13 about respirators, about your company's history of
14 research and development on respirators, when you
15 took this job in 1976.

16 MR. WHITTENBURG: If he can
17 answer that, that's fine. As I understand
18 the question, you have asked him what
19 all everybody told him that was working
20 with him in 1976. You know, that's
21 going to take us a year for him to
22 try to tell you that. I don't think
23 that he can physically do it.

24 (By Mr. Swearingen)

1 A If that's what the question is. I was
2 going to ask you to rephrase it, because I didn't
3 really understand what you wanted. It had two segments,
4 I know, and it was hard to differentiate what you
5 were getting at.

6 Q I'm simply trying to cover the point that
7 has been raised by your company's lawyer on two
8 or three occasions: that in addition to what you
9 read, you learned stuff from other people; okay?

10 A Okay.

11 Q He brought that up and not me. I want
12 to know what you recall about what you learned from
13 other people.

14 I have asked you if you can name a certain
15 person that was instrumental in teaching you about
16 respirators, and you said that you cannot name one.

17 A That's right, because there was no one
18 individual person. It was a group of people that
19 I got information from; that's correct.

20 Q Did you call a meeting of all your people
21 and say, "Fellows, I want a skull session here to
22 get me going in this field. Now, you all tell me
23 what I need to know"?

24 A No, it's not done that way. The way it

1 before, and individually talk with each of the people
2 and find out what their projects were, how they were
3 approaching them and what they were doing technically,
4 what were their experiments, how were they running
5 them, what were the results, as against the stated
6 objective, goal of that project.

7 If you're asking when I first got there,
8 that stated objective would have been already there
9 because they were physically in the programs already.

10 Then after that I would go very quickly
11 and work with our process engineering groups, the
12 people who controlled the processes of making our
13 materials. And I can tell you now that you might
14 as well not ask me about those because those are
15 proprietary, and I can't speak about how that actually
16 functions, how we make those things.

17 Q What does "proprietary" mean?

18 A "Proprietary" means a company secret, a
19 trade secret.

20 Q Are you versed in the law of trade secrets
21 and company secrets?

22 A All I can tell you is 3M does not allow
23 me just to sit here and tell you about how we make
the filter media and things like that that I learned

1 Q You can relax, then, because I'm not going
2 to ask you about any company secrets.

3 A Okay. Fine.

4 Q What else did you do?

5 A I'm sorry, what else do I do or what else
6 did I do?

7 Q What else did you do? To summarize, you
8 told me that you went to each project manager.

9 A No, I went to each of the people that worked
10 under me.

11 Q And you asked them about their project,
12 how it was going, what were their results and so
13 forth.

14 A How they were doing it, yes.

15 Q In other words, you said, "Are you getting
16 anywhere on your project; where are you on your project?"
17 Is that what you did?

18 A Yes, that's correct.

19 Q And after that you went from there to the
20 people that have to make what these project people
21 tell them that they can make, and they have to work
22 it into the real mechanics of everyday production;
23 right?

24 A That's correct, yes.

1 to pass to get an approval from them.

2 Q Was most of your effort directed at the
3 requirements that you needed to get NIOSH or other
4 governmental agency approval? Was that your main
5 objective?

6 A No, not at all. Our main objective was
7 to make a product as we saw it that the marketplace
8 wanted and then subset requirements of that are that
9 they have to be approvable, too. So, therefore,
10 that is only part of the thing that I was concerned
11 with, and that was whether or not they would pass
12 approval tests. It also had to be known that this
13 thing was acceptable by the work force by employers
14 and employees in the marketplace.

15 Q Bring me on through your work history from
16 '76 when you took over as Manager of soft goods,
17 new product development.

18 A Chronologically?

19 Q Yes.

20 A To today?

21 Q Yes.

22 A For about a year and a half I did that,
23 as I said. And then, again, I took over the technical
24 service group, the same function as now, the same

1 Then for one year in between - between
2 that section of having technical service and the
3 one I have now, the same one in time - there was
4 just a hiatus in there of one year where I was performing
5 the function of Business Development Unit leader
6 for our gas monitoring devices.

7 Q Was that sort of a special assignment?

8 A Yes.

9 Q Was there any reason that you received
10 that assignment?

11 A I was part of the BDU - BDU meaning the
12 Business Development Unit. I was part of that BDU
13 as my job function was Technical Service Manager.
14 And that function is like rotated between people.
15 It will change periodically as to who the leader
16 is for that group. Primarily, it's -- The upper
17 Management of the Division uses that. Again, it's
18 more of a thing that you don't care about it too
19 much, but it's the personal management skills development
20 of technical people. So, that's where -- I did that
21 for one year's time. Then I came back to technical
22 service for the last three years.

23 Q That one year had nothing whatsoever to
do with respirators, did it?

1 as to how our products actually function, how they
2 work. It is not enough just to say that's a dust
3 respirator and let it go at that. You have to know
4 how it works. So, yes, I keep talking to them, still
5 looking at what their projects are like; not from
6 a management standpoint, because I am not their manager
7 anymore in new product development, but knowing what
8 they are doing and how it is going.

9 Q Now your primary purpose is responding
10 to customer inquiries, deciding what you can tell
11 a customer that a certain respirator will do under
12 certain circumstances?

13 A That's one of the things we do, yes; that's
14 true.

15 Q I'm sorry, I may have forgotten; but what
16 are the other general areas of responsibility that
17 you have now and that you have had since 1978, other
18 than giving customers information about your products?

19 A We provide the sales training for our sales
20 force, the technical training and not the selling
21 skills type of thing. It's the technical training
22 that they need to be good sales representatives for
23 OH&SP.

We are also involved with the technical

1 things you would see on the box on how to do it.

2 That in general is the -- It's information
3 transfer to our sales marketing and the customer
4 of all sorts. That's what we do.

5 It's a two-way street, not just one direction.
6 We are also listening to our customers and others
7 when they say, "Why don't you make this. We would
8 dearly love to have a product like that." We bring
9 that information back so that our R&D people can
10 see if it is possible to do.

11 Q If someone called a local representative
12 of your company and said that they needed so-and-so,
13 they would say to call your Division and tell them
14 what you need, these are the people that take the
15 information about what you need?

16 A Yes, that's true. We have a phone they
17 can call.

18 Q What is that number; do you know it?

19 A It's -- I would have to get the card.
20 The reason I say that - it's not that I don't want
21 to tell you - it was 1-800-328-1300, but we just
22 changed it. It's got a new -- We have cards that
23 we pass out to everybody, and I don't have one of
24 them with me. So, I just don't remember what the

1 things you would see on the box on how to do it.

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3 transfer to our sales marketing and the customer
4 of all sorts. That's what we do.

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22 changed it. It's got a new -- We have cards that
23 we pass out to everybody, and I don't have one of
24 them with me. So, I just don't remember what the

1 Q What about customer complaints about your
2 products; are they directed to your Department or
3 some other Department?

4 A They are directed to us, yes.

5 Q Is there a number for that?

6 A No, they come written, usually. It's possible
7 that a customer could call us and complain, certainly.
8 But there are some formal systems for that, too.

9 Q Is there a particular person in your Department
10 that is charged with the responsibility of receiving
11 customer requests as to what their needs are, or
12 does just anyone pick up the phone and talk to them?
13 How does that work?

14 A No, there is one person that is on our
15 phone, our in-call phone, one person alone, other
16 than when he is being relieved or is on vacation
17 or is sick or something. Yes, there is one person
18 assigned to that.

19 Q Is he technically qualified? In other
20 words, he doesn't just take a message. He can really
21 talk to them about their needs?

22 A Yes, I would say yes, certainly.

23 Q Does he make a record of those calls?

In general, yes. He will write down the

1 is as to whether he will make a record of it or not.

2 Q I understand that. I'm sure he gets a
3 lot of trash calls that don't mean anything. But
4 if it is a significant request that he thinks you
5 need to follow up on, for example, he makes a record
6 of that?

7 A Sure.

8 Q What does he record it in, a book, a file?

9 A A piece of paper. It would just have a
10 comment section on it. Customer "A" asked us if
11 we had this kind of respirator or that kind of monitor;
12 if we don't, why don't we? Gee, it would be nice
13 if we did - that type of thing.

14 Q If I wanted to look at those records, what
15 would I tell your lawyer that I wanted to see? How
16 would I identify them? Do we need to identify them
17 any further than what you and I have talked about?

18 A I don't think so. That would be the in-call --
19 It doesn't have a name. It's just a sheet that is
20 used by the in-call guy. A telephone conversation
21 report, I guess, would be as good as anything.

22 Q Do you keep those somewhere?

23 A They are supposed to be retained, yes.

What about when someone calls in with a

1 A Not normally that way. What would happen
2 is that someone would call in and say, "I have a
3 complaint." We ask them to contact the sales
4 representative that covers the area of the country
5 they are in, using the distribution system that our
6 products go through and our phone representative.
7 There is a format that is written down that describes
8 what the problem is and how much the product is involved,
9 et cetera; who the person is and who the distributor
10 is, and it is given to us so that we can evaluate
11 the complaint.

12 Q You refer them to some other person or
13 local sales agent or whatever to complain to; right?

14 A No, they have already complained to us
15 when we tell them to do that. We get our sales
16 representative in touch with them, so that they can
17 go through the formal procedure of getting the samples
18 and going to see the person.

19 Q And that person files a written complaint?
20 That's required, is it not?

21 A Yes, it is required if -- It's our formal
22 complaint statement that they have.

23 Q You don't keep a record of those calls
in your Division?

1 Q Yes.

2 A No, I don't, because that would be calling
3 back and saying - leaving a message for the sales
4 representative with their in-call service, saying,
5 "Call this person, he has a complaint, so get ahold
6 of him and see what's going on."

7 Q Well, it is more complicated to complain
8 than it is to order a new product; is that right?

9 A No, it's easier to complain, in fact.
10 Sometimes ordering a new product is difficult.

11 Q Do you keep a record when someone calls
12 and says, "Will this respirator do for a certain
13 purpose?" Are those calls recorded; that so-and-so
14 called and wanted to know if a certain respirator
15 was adequate for a certain job, and then you give
16 them some type of advice?

17 Is there a record made of the inquiry and
18 the response from your company?

19 A Yes, I believe so.

20 Q What do you call that?

21 A It's basically the same thing. It's the
22 same report scheme written down.

23 Q And they are retained in the same manner?

24 A I believe that's right, yes.

1 me, you would know what we are talking about and
2 you could get them; is that right?

3 A I would know what you are talking about.
4 Producing them - you would have to go through ---

5 Q (Interrupting) Assuming that the lawyer
6 has no objection.

7 A Yes.

8 Q But you know where they are and you know
9 what we're talking about?

10 A I don't know where they physically are
11 right now. I could ask.

12 Q From 1978, about, until now, what experience
13 have you had in the testing of your company's respirators?

14 A The experience I have is that I know what
15 tests are done. I know how they work, what they
16 measure.

17 Q Have you ever observed testing?

18 A Many times.

19 Q Would you tell me, before we get into the
20 testing -- There are a lot of technical trade words
21 that are creatures of the respirator business, are
22 there not?

23 A Yes, sir.

24 Q They have a particular meaning in the respirator

have to know what it is to be able

1 to communicate?

2 A Certainly.

3 Q First, would you tell me - based on your
4 knowledge - what are the different types of respirators,
5 generally speaking?

6 I'm not limiting it to the 8710 or the
7 8500. But if I as a layperson said, "Tell me what
8 you know about respirators and what different kinds
9 of respirators are there," what would you tell me?

10 A Being short and sweet on it, there are
11 two separate kinds: atmosphere-supplying and non-
12 atmosphere-supplying.

13 In the non-atmosphere-supplying, you would
14 have quarter mask, half mask, full facepieces. Various
15 kinds of cartridges go along with that, whether they
16 are particulate, they might be gas and vapor ---

17 Q (Interrupting) You have to slow down.
18 You have atmosphere-supplied and non-atmosphere-
19 supplied. You have quarter something. What are
20 the ...

21 A I said under non-atmosphere-supplying,
22 there are quarter mask, half mask, full facepieces.

23 Q What else are there under non-atmosphere-
24 supplying?

1 then have either particulate filtration on them in
2 several levels of efficiency, or they can have gas
3 and vapor chemical cartridges on them or canisters.

4 Q Particulate filtration in varying what?

5 A Efficiencies.

6 Q Are there trade words for those classifications?

7 A For which classifications?

8 Q The efficiencies, for the different efficiencies.

9 A People refer to it -- Percent efficiency
10 would be what I would call it.

11 Q Is there a trade meaning to the words "high
12 efficiency"?

13 A Yes, there is.

14 Q Is there a word called "low" efficiency?

15 A No.

16 Q Is there a word called "medium efficiency"?

17 A No.

18 Q Is there any other word like "high" efficiency
19 that tells us about particulate filtration?

20 A No, not in the sense that you are saying
21 it there; no.

22 Q But there is a word that has a particular
23 meaning, and that word is "high" efficiency; is that
24 right?

"People in the respirator world would

1 immediately look onto a certain test that is run
2 that describes a so-called high efficiency filter.

3 Q It also relates to the percentage of filtration,
4 doesn't it?

5 A In a synthetic test aerosol that is used
6 to characterize that, yes, that's true.

7 Q What is that percentage?

8 A In percent efficiency, 99.97 minimum.

9 Q And that's what we mean in the trade when
10 we say that it is a high efficiency respirator?

11 A As I said, yes, against a synthetic laboratory
12 test.

13 Q Does it tell you something about a certain
14 particle size?

15 A Yes, it does.

16 Q What does it tell you about that?

17 A It tells you that you are using essentially
18 a mono-dispersed particle that has its mean average
19 diameter at 0.3 microns - I'm sorry - it's .3 microns.

20 Q .3 microns?

21 A Microns. A millionth of a meter is a micron.

22 Q So, if you talk about something is of high
23 efficiency, it means that it will filter out 99.97
24 percent of particulates that are not less than the
size of .3 microns?

1 A In general, that would be true, if the
2 thing is functioning correctly; yes.

3 Q Are we told anything else in the trade
4 when you say high efficiency, other than these two
5 things?

6 A Define "trade" for me. Manufacturers or
7 users?

8 Q Well, the same lingo applies, I assume.

9 A No, it doesn't.

10 Q It doesn't?

11 A Not when you say does anything else come
12 to mind. It depends. If you are a manufacturer,
13 more things come to mind. If you are a user, probably
14 not.

15 Q Let's assume that I have a sophisticated
16 user and a sophisticated manufacturer. Do we use
17 the same language or not?

18 A Sure, you use the same language. You asked
19 me the meaning of those things, what it invokes.
20 I mean, I have no wish to fence with you.

21 If you are very, very knowledgeable about
22 all the testing that goes on, it would also tell
23 you something about the pressure resistance of that
24 filter against a certain flow rate of air going through

1 A It tells you what levels NIOSH will allow
2 for getting certifications.

3 Q What are those levels?

4 A I would have to go and look at it.

5 Q So, you don't know?

6 A Not from memory, no. I know in general
7 about where the area is.

8 Q As a layperson, am I to understand that
9 that is a rating as to how hard a person has to breathe
10 to get air to pass through this filter?

11 A It relates to it, yes.

12 Q You called it levels of what?

13 A Pressure resistance, flow resistance; pressure
14 drop and flow resistance of air through it.

15 Q That just says how difficult it is to pass
16 air through the filter?

17 A That's correct; at a given flow rate, yes.

18 Q And you need to know that, because you
19 need to know how hard a guy has to breathe to use it?

20 A You need to know the flow rate for
21 certification. Yes, you do, because it is listed
22 and specified by NIOSH. Whether or not that flow
23 rate has anything to do with the physiology of individual
24 people, I couldn't tell you. I don't know.

1 or three questions to mean that to you, high efficiency
2 means one thing; but maybe it means something else
3 to a sandblaster with a fifth-grade education?

4 Is that what you are really trying to tell
5 me?

6 A What I'm trying to tell you is that's right,
7 from the knowledge of what the high efficiency filters
8 that I know about are versus somebody like that.
9 Of course it would be different. I know more about
10 what that filter is and the certification requirements
11 are for it than I would suspect the average person
12 out in the world.

13 Q You would not expect a sandblaster with
14 a fifth-grade education to understand all of these
15 things from the words "high efficiency" in your trade;
16 is that right?

17 A I would expect them to evoke something
18 that says it's pretty good. That's just an opinion
19 on my part, since I don't know any fifth-grade-educated
20 sandblasters personally.

21 Q Do you know anybody with a fifth-grade
22 education?

23 A No, sir, not a one.

24 Q Let me ask you this: Do you put that word

plate or brochures?

1 MR. WHITTENBURG: What word is
2 that?

3 MR. SWEARINGEN: High efficiency.

4 A Yes, on one.

5 Q How long have you used that word?

6 A We have used that word in terms of
7 certification, only recently.

8 Q I mean on your little brochure that you
9 hand out that may reach a fifth-grade sandblaster.
10 Do you put the word on an 8710 or an 8500, or have
11 you ever put it on there and said "This is a high
12 efficiency respirator"?

13 A Just right now asking me that, I don't
14 recall if we ever have or not.

15 Q If you did, it would not mean much to him,
16 would it, based upon what you and I just talked about?

17 MR. WHITTENBURG: Don't answer
18 that unless you know what is going
19 on in the mind of this mythical person.

20 MR. SWEARINGEN: He's talked
21 about what goes on in their mind,
22 Jo Ben.

23 MR. WHITTENBURG: He has told
24 you what his opinion is of what "high
-- efficiency" might evoke in the minds

1 of some average person. He has told
2 you that he doesn't know. If you
3 want him to speculate on that, I guess
4 you can ask him to speculate on it;
5 but it is just speculation.

6 (By Mr. Swearingen)

7 Q I interrupted you a few moments ago. We
8 had gotten down to the point under non-atmosphere-
9 supplied respirators; that under the quarter mask,
10 full mask and half mask facepieces and the powered
11 air purifiers you have particulate filtration. And
12 we have talked about those ratings.

13 What other kinds of respirators are there?

14 A There is also chemical cartridge respirators
15 under that designation.

16 Q Chemical cartridge?

17 A Yes, sometimes known as gas and vapor.

18 Q What do we mean when we say a chemical
19 cartridge?

20 A That means a sorbent of some sort that
21 operates by physical or chemical absorption on the
22 surface of it, such that it can scrub out various
23 gases and vapors that are in the air that are being
24 pulled through that sorbent media.

25 And some of your filters, under the

1 non-atmosphere-supplied, are the filters themselves
2 treated with certain chemicals?

3 A Yes, in the chemical cartridges that's
4 true.

5 Q I'm a little confused, so I want to try
6 and tell you where I am.

7 I am not interested in a cartridge that
8 will protect you against a certain chemical exposure;
9 okay?

10 I'm interested in the chemicals that are
11 used to treat your filters under certain non-atmosphere-
12 supplied filtration, that being a chemical that is
13 applied to the filter itself so that it will increase
14 its ability to filter out the objectionable material.

15 Do you use any chemicals on these filters?

16 A Yes, only in the chemical cartridges, though,
17 and not in the particulate side.

18 The chemical cartridge sorbents, many of
19 them have chemicals in the substrate. It's like
20 a support media, if you will. Chemicals are treated
21 onto the surface of the support media, and they are
22 the things that are locking onto the gas and vapor
23 molecules as they come through.

24 Q I would assume that we are not really interested
in a chemical cartridge thing for a sandblaster,

1 are we?

2 A Not at all.

3 Q Not generally speaking?

4 A Not generally, no.

5 Q Is part of your job with 3M to stay abreast
6 of your competition?

7 A In general, yes. We don't particularly
8 go out of our way in that area, no.

9 Q Do you know whether or not some of your
10 competitors treat their filtration materials with
11 certain chemicals to enhance their filtration qualities?

12 A I don't know.

13 Q Do you know anything about the pros and
14 cons of treating your filtration material with certain
15 chemicals to enhance their filtration qualities?

16 A Tell me what "pros and cons" means. In
17 what sense?

18 Q Reasons to do or not do it.

19 Has your company ever considered treating
20 the filtration material with chemicals to enhance
21 their filtration qualities?

22 MR. WHITTENBURG: At what time?

23 He just told you that they do it on
24 the gas and vapor.

MR. SWEARINGEN: No. not those.

1 (By Mr. Swearingen)

2 Q I'm talking about your other non-atmosphere-
3 supplied respirators.

4 You told me awhile ago that they don't
5 have any chemicals on them, didn't you?

6 A Yes, that's true; they don't.

7 Q Have you ever considered putting chemicals
8 on them to enhance their filtration qualities?

9 A No.

10 Q Do you know of any chemicals that are used
11 by your competitors to do that?

12 A In particulate filters, no.

13 Q We are down to chemical cartridges. Are
14 there any other types of respirators that you would
15 define to a layperson?

16 A There's a whole other side of atmosphere-
17 supplying.

18 Q What would they be? Do you all do any
19 of that?

20 A Yes, we have a line of atmosphere-supplying
21 hoods and helmets.

22 Q What do you call them?

23 A Generally, they are called the personal
24 environmental systems - PES for short.

Have you all been in that field?

1 A That was before I got to OH&SP. I believe
2 it was 1974, I think. I am not dead certain. I
3 think it was right around in there.

4 Q Are you satisfied that that was a response
5 on the part of your company to certain Government
6 regulations that were passed to protect workmen?

7 A What, that we got into that business?

8 Q Yes. You started making air-fed hoods
9 because the Government said that there were certain
10 things that you could not make a person do unless
11 you gave them an air-fed hood. That's why the market --
12 You started getting calls on this 1-800 number, and
13 they said they had to have an air-fed hood for the
14 job, and do you all make them.

15 MR. WHITTENBURG: Are you asking
16 that as a question, or are you theorizing
17 that that is what happened?

18 MR. SWEARINGEN: I am asking
19 him if that is what happened.

20 (By Mr. Swearingen)

21 Q Your company responded to Government pressure
22 to make a new product, didn't they?

23 A I have absolutely no idea if that is true
24 or not.

Q You don't?

1 A No.

2 Q You never thought about it?

3 A Have I ever thought about it?

4 Q Yes.

5 A No, I haven't thought about it because ...

6 Q How many air-fed hoods do you make?

7 A We make basically three. Each one of those
8 then has a subsection, too.

9 There is a group that is based on - I'll
10 call it a hard fiberglass helmet shell, one that
11 utilizes a strictly soft approach. Tyvek is what
12 it is, duPont's material.

13 Q Which do you make that the sandblasters
14 use?

15 A The hard fiberglass type.

16 Q The others would not be for sandblasting?

17 A No.

18 Q Maybe for painting or something else?

19 A Yes. The powered air purifier on the other
20 side has a system setup that allows it to be used
21 in sandblasting. But in the air-fed ones it is strictly
22 the fiberglass helmet type.

23 Q Are you familiar with your air-fed hoods?

24 A Yes.

Q Are you familiar with the requirements

1 as to the hood being supplied with a certain volume
2 and certain pressure of air to operate properly?

3 A Yes, I know that's true.

4 Q Do you know what the required volume is?

5 A The minimum is 6 cubic feet per minute.

6 Q Does your air-fed hood contain any kind
7 of monitoring device or warning device built into
8 it, to let a user know whether or not he is getting
9 adequate air supply?

10 A No, there is no formal warning device inside
11 the helmet.

12 Q There is no valve or piece of equipment
13 that shuts it off or sounds an alarm or whatever
14 if his air supply drops below the minimum requirement?

15 A If that is true, it would involve a compressor
16 failure for the air supply, of which we are not a
17 part in our product line. And those are mandated
18 to have shutdown alarms or high-temp alarms, if that
19 is what is going on.

20 So, yes, there is a way that a person would
21 know that his air supply was being shut down.

22 Q Do you know what percentage of the market
23 your company has in the area of respirators?

24 I took a deposition of a Bullard person
25 in San Francisco. He told me they probably manufactured

1 half of the forced-air hoods that were in use in
2 this country, either under their name or a trade
3 name for other people.

4 Based upon your involvement in sales and
5 research and development for your company, have you
6 ever learned through your company or any other source
7 as to generally what percentage of the market your
8 company has in the field of respirators?

9 A All of the respirators we sell?

10 Q All of them.

11 A All of them?

12 Q Let's say in the respirator business generally.

13 A No, I don't know what that number would
14 be.

15 Q Under your definition of different kinds
16 of respirators, I assume that the 8710 and the 8500
17 come under the non-atmosphere-supplied description;
18 is that right?

19 A Only the 8710. The 8500 isn't a respirator.

20 Q What is it?

21 A It's a nuisance dust mask.

22 Q I'm going to come back to that in a minute.

23 The 8710 - does it come under your definition
24 as a non-atmosphere-supplied respirator?

A Atmosphere-supplying, yes; that's correct.

1 A half mask, and on the side of particulate filtration
2 and not gas and vapor.

3 Q In the field of that type respirator, non-
4 atmosphere-supplied, do you have any idea what percentage
5 of the market you have in the United States of America
6 on those types of respirators with the sale of your
7 model 8710?

8 A No, sir, I don't.

9 Q You don't have any idea?

10 A None whatsoever.

11 Q Whether you have a very small part of the
12 market or a very large part of the market?

13 MR. WHITTENBURG: He just said

14 he doesn't have any idea.

15 A I have no idea.

16 Q You don't know if it's 1 percent or 50 percent?

17 MR. WHITTENBURG: Don't answer

18 that. That's repetitious.

19 (By Mr. Swearingen)

20 Q Let's talk about the 8710. What is it?

21 A Do you want to narrow that down, what is
22 it?

23 Q What do you call it?

24 A We call it a half mask particulate respirator.

25 Q What is it good for?

1 A It's approved for use against dusts and
2 mists.

3 Q I'm not asking what it's approved for.
4 I don't care what the Government says; do you understand?
5 We can forget what the Government says unless I ask
6 about Government regulations. I'm asking what it's
7 good for in your opinion.

8 A What it's good for is particulate filtration
9 against airborne particulate contaminants that are
10 not exceeding 10 times the threshold limit value
11 in concentration, and that have threshold limit values
12 of not less than .05 milligrams per cubic meter of
13 air.

14 Q Can you give me a layman's translation
15 of that? And I'm not being a smart aleck with you.
16 But what different products are commonly encountered
17 that you know of that you recommend the use of this
18 mask for? What do you tell people when they call
19 you that it's good for? What do you tell them that
20 it will protect them against?

21 A We don't ever answer a question like that,
22 not the way you stated that. Nobody calls us and
23 says, "Tell us what the 8710 is good for," and you
24 sit there and rattle off a list. They will tell
us "I have this, which product do you recommend?"

Q I guess that's a different way of answering the same question.

What are some of the things that you recommend the 8710 to protect against, common everyday things that we laypeople will understand?

A Grain dust is one. Cotton dust is a very normal use for that kind of product, tobacco dust, any of the lead dusts, for instance: iron, zinc, any kind of metal dust that does not go below .05 milligrams per cubic meter of threshold limit values.

It's a very broad range of things that a dust/mist respirator is recommended for.

Q A dust mask?

A A dust/mist, m-i-s-t, respirator; dust and mist. It is usually just written dust slash mist. You would see it that way.

Q Any other common irritants that you would think of that you have in the past recommended the use of that respirator for?

MR. WHITTENBURG: You just injected "irritants" in there.

MR. SWEARINGEN: I didn't mean that as a magic word. "Other things."

MR. WHITTENBURG: Go ahead and

1 answer the question. "Irritant" may
2 be a magic word. I don't know.

3 MR. SWEARINGEN: I don't mean
4 it to be.

5 (By Mr. Swearingen)

6 Q You have listed several. Can you list
7 any more for me?

8 A Yes, it is utilized in places like foundries,
9 for instance, for core materials that are shipped
10 and ground out that contain -- Well, the hazard generally
11 in those kinds of things might be silica. It might
12 also be a metal dust, too, depending on what they
13 are doing.

14 It's almost easier to tell you by exception
15 what dusts and mists they are recommended for. Dust/mist
16 respirators are not used for fumes, for metallic
17 fumes.

18 Q You didn't mention sandblasting.

19 A That's right.

20 Q Is it recommended for sandblasting?

21 A For the person who is doing the sandblasting
22 himself, no.

23 Q What other people are there? Are there
24 people around sandblasting that you would recommend
25 it for?

1 A Yes, depending on the concentration involved.

2 It would have to be known by measurement. A fellow
3 who was bringing the sand in in the bags and putting
4 it in the hopper and feeding the blast gun itself;
5 for men walking around; maintenance people that
6 might be in the area - those are possible candidates
7 for wearing a half mask dust respirator.

8 Q If I called on your 1-800 line and told
9 you that I was a sandblast contractor and I wanted
10 something from your company to protect my pot tenders,
11 what would you tell me?

12 A I would ask you first whether you knew
13 if this was going to be an inside or an outside job;
14 where this pot tender was going to be.

15 Q I'm going to tell you that this is an outside
16 job in Jefferson County, Texas, in August, sandblasting
17 a tank from the outside.

18 A Okay.

19 Q And the pot tender was going to be in the
20 general area of the blaster.

21 A I would probably ask you what you mean
22 by "general area", then. Do you mean 10 feet or
23 100 feet away?

24 Q Well, I don't know. They work within fairly
close distances. I guess. I don't really know.

1 Do you know the standard distance?

2 A I'm not aware that there is a standard
3 distance. That's why we ask.

4 Q Say within 50 or 100 feet.

5 A If it's 50 or 100 feet, we still strongly
6 recommend that some kind of air sampling be done.
7 But the likelihood of the airborne concentration
8 being 100 feet away, especially if it is upwind of
9 the blaster, it would be unlikely to go over 10 TLV's;
10 but it should be checked. And if that was true,
11 then the half mask respirator might be apropos for
12 that.

13 Q What if he said, "Man, I don't know how
14 to check for concentration, and I can't get anybody
15 out here to do it"?

16 A We would probably ask him if he has gone
17 to his Department of Public Health and asked them;
18 if he has gone and looked for a private industrial
19 hygiene consultant that does that all the time.

20 Q I'm just asking you to assume that he doesn't
21 have the benefit of that. He either can't afford
22 it or it is not available or something. What would
23 be your advice?

24 A The advice is when the concentration levels
25 are unknown, or at least to the point where you are

1 almost certain that they are going to be either one
2 way or the other, because of past experience, then
3 you would assume the largest hazard. And the assumption
4 that we would make there is that his hazard would
5 be the same as the blaster's himself, with the exception
6 that he would not have to be protected with a blast
7 helmet for rebound. He would run an air supply off
8 the same system that the blaster has, only use one
9 of the other hoods; probably one of the lightweight
10 ones, like the Tyvek type.

11 Q Have you personally ever had the opportunity
12 to suggest or recommend different uses of your product
13 line to a sandblaster or a sandblasting contractor?

14 A Myself personally, no. At least, I don't
15 remember. I don't think so. I don't think I have.

16 Q Have you ever had the personal experience
17 of talking on that 1-800 number to anybody about
18 your product line - you, personally?

19 A Yes, I have.

20 Q What have you talked about?

21 A I don't remember.

22 Q You don't remember?

23 A Every call is different. I couldn't tell
24 you.

Q Is there any particular person in your

1 Department that has the assignment that more directly
2 relates to the problem of the sandblasting industry?

3 A In Technical Service?

4 Q Yes. Say if a sandblaster calls, is there
5 any particular person that you will have talk to
6 that guy?

7 A No, we don't have an in-house expert on
8 sandblasting, in that sense that you're talking about.

9 Q Do you have any in-house experts in any
10 particular field?

11 By that I mean when you have an inquiry
12 about any particular industry, is there anybody in
13 your Department that you would go to with that inquiry
14 to get a response?

15 A If it's an in-depth discussion of what
16 the respirators really do, yes. We don't expect
17 the person on the in-call number to do that. One,
18 he may not be able to, to get really down deep in
19 an individual subject; and, two, that is not his
20 job, anyhow, because he has to be available to talk
21 to a lot of people.

22 So, yes, in Technical Service there would
23 be a person - say you want to talk about blast hoods -
24 that has that as their job responsibility; that's
the kinds of products they work on as their main

1 responsibility.

2 Q What areas are these? I mean, can you
3 help me?

4 Who is the person that handles sandblast
5 hoods?

6 First I want to talk about the sandblasting
7 industry. I'm just asking you if there is anyone
8 in your Department that you go to for a particular
9 expertise with a sandblasting industry question about
10 your product line.

11 MR. WHITTENBURG: Not limited
12 to sandblasting contractors like you
13 asked before?

14 MR. SWEARINGEN: No, not limited
15 to that. Any person that wants to
16 know - that has a particular complex
17 problem or whatever.

18 A Generally, that would go to the person
19 that I have assigned to our PES group of products
20 as the Tech Service Engineer for that.

21 Q Does that person have a name?

22 A Yes, sir.

23 Q What is his name?

24 A Bill Albrecht.

25 Q Bill ...

1 A Albrecht.

2 Q How do you spell that?

3 A A-l-b-r-e-c-h-t.

4 Q How long has he had that area of responsibility?

5 A About a year and a half now.

6 Q Did someone have it before him?

7 A Yes.

8 Q Can you tell me who that person has been

9 in the past, since you've been there about 10 years?

10 A The person before him would have been Barry

11 Dayton.

12 Q Is he still with the company?

13 A Yes, he's still with 3M.

14 Q No longer in your deal?

15 A No longer in ours.

16 Q How long did he have that responsibility;

17 do you know?

18 A A couple of years, perhaps.

19 Q Do you remember who had it before him?

20 A Leo Gehlhoff, G-e-h-l-h-o-f-f.

21 Q About how long did he have it?

22 A Again, a few years.

23 Q Did someone already have that responsibility

24 when you took your job?

A Yes I believe so; but -- When I took the

1 job as Development Manager, OH&SP?

2 Q When you took the same job you have now.

3 A Oh, yeah, that would be Leo.

4 Q That was Leo?

5 A Yeah.

6 Q Do those guys keep any record of inquiries
7 or work that they do in response to customer questions
8 or requests?

9 A I don't know. I don't remember if they
10 do or not, if they exist.

11 Q The guy on the phone keeps a record of
12 these little inquiries?

13 A Yes.

14 Q I forget what you called it. It's a little
15 daily sheet or something.

16 A Yeah.

17 Q But you don't know if they keep a record
18 of more complicated inquiries of a specialized nature?

19 A No, I don't. They might. Sometimes they
20 do, and sometimes they may not. I couldn't tell
21 you if they have them all the time or not.

22 Q As a part of your job, did you ever review
23 the records about customer complaints or customer
24 requests that came into your Division?

25 Did you ever sit down and shuffle through

1 them?

2 A Yes, I do.

3 Q What did you shuffle through so you could
4 find out about customer complaints?

5 A I don't shuffle through them. I see them
6 as they come through.

7 Q That's after they go back and come the
8 route of filing an original complaint?

9 A Yes, in that sense; yes.

10 Q Because there is no record made, as I
11 understand, in your office when the call comes in,
12 other than a record for them to call the Sales Division
13 or whatever?

14 A That's correct, yes.

15 Q Do you ever shuffle through the customer
16 requests to see if they have been taken care of?

17 A It's not a question of being taken care
18 of. I'll find out about those because the customer
19 request will have a telephone conversation report
20 written by it and addressed to someone in the R&D
21 section, let's say, that "Here's an idea from a customer."
22 I would be copied on that and see it.

23 Q Do you recall ever seeing any kind of memos
24 or reports generated by Mr. Gehlhoff, Mr. Dayton
25 or Mr. Albrecht that directed themselves specifically

1 to the industry of sandblasting?

2 A Not that I remember, no.

3 Q Do you know what silicosis is?

4 A In general I know what it is, yes.

5 Q In general what do you think it is?

6 A It's a lung dysfunction that essentially
7 cuts down on the ability of a person to transfer
8 oxygen from the air into his bloodstream. It's a
9 general blocking off of the small airway passages
10 of the lung.

11 Q Do you know what causes it?

12 A Silicosis?

13 Q Yes.

14 A Silica.

15 Q You call it a "dysfunction." What's that?

16 A A "dysfunction", meaning that the lung
17 does not function in a normal, healthy manner.

18 Q Do you understand it to be a disease?

19 A I understand it to be a disease. I couldn't
20 comment on what it really is because I am not a physician.
21 That is what I understand it to be, yes.

22 Q Everything that you know about silicosis
23 is something that someone told you or you read because
24 you are not a doctor?

1 Q You defined it, sir, as a lung dysfunction.

2 A Yes.

3 Q And not as a lung disease. Do those two
4 words mean the same thing to you?

5 A They may not. Dysfunction could be short-term,
6 in a sense of being an acute thing, rather than a
7 chronic, long-term thing.

8 I understand silicosis to be a long-term
9 type problem and not something that comes and goes.

10 Q Do you understand it to be a disease or
11 a dysfunction that is not only long-term, but one
12 that is progressive and may continue, even though
13 the person is no longer breathing silica?

14 A No, I was not aware that that's true.

15 Q Do you understand it to be a disease that
16 can be disabling?

17 A Yes. That I know.

18 Q Tell me when you first gained your knowledge
19 about the word "silicosis" and what it means to you.

20 A The first time?

21 Q Yes.

22 A It would have been back - most likely --
23 Yeah, it would have been back when I was in the New
24 Product Development section. When reading through

documents you come across and ask what

1 does pneumoconiosis and fibrosis-producing dust mean,
2 because those are words that are used in NIOSH's
3 approval scheme. So, you get a generalized explanation,
4 much like I just gave you. And you ask, you know,
5 what are those; and they will say, well, silicosis
6 is one that comes from silica dust; things like cotton,
7 you get byssinosis, and I guess tobacco and coal
8 dust -- They all have their individual names, coming
9 from the root causes. So, that's where I would have
10 first heard about it, I'm sure.

11 Q And that would have been about ---

12 A (Interrupting) '76, into early '77, somewhere
13 in there.

14 Q I guess that I understand that most of
15 what you know about the different cause and effect
16 relationships between certain dusts and certain lung
17 dysfunctions and lung diseases came from the Government
18 regulations that relate to those matters?

19 A No. No.

20 Q Reading NIOSH and what have you?

21 A No. I said that I saw the words "pneumoconiosis
22 and fibrosis-producing dusts" in those documents,
23 and that I would ask people what is that, you know,
24 what does that mean.

25 You can look them up in industrial hygiene

1 textbooks and see the definitions of them there.

2 Q Did you ever look them up?

3 A I really don't recall whether I looked
4 it up or asked someone.

5 Q You don't recall ever reading anything
6 about the disease of silicosis, outside of a Government
7 regulation that may refer to certain words?

8 A Reading about ...

9 Q About what is silicosis. Did you ever
10 seek out a book of any kind and sit down and read
11 to find out what silicosis is?

12 A No, I don't think I ever did that.

13 Q For that matter, I assume that you haven't
14 done that on any lung dysfunction or disease?

15 A That's correct.

16 Q Does your company have a person, a medical-type
17 person -- You mentioned way back that something was
18 part of the Medical Division or whatever.

19 Do they furnish you with any medical expertise,
20 a person who understands diseases, to come in and
21 tell you what they are all about?

22 A I would suppose they would, if we asked
23 them.

24 Q You have never asked them?

There was never any need to in

1 my view when you are developing a respirator. The
2 way we look at it is we know what it is we are trying
3 to stop from getting into the airways of a person,
4 and it is the province of the physicians and
5 epidemiologists to know what happens if you don't
6 do that; if it gets down there, what happens to a
7 person.

8 In my view that's not what a respirator
9 manufacturer is concerned directly with. We are
10 concerned with keeping those contaminants out of
11 there. What they do when they get there is up to
12 other people's province to define and what the problems
13 are after that takes place.

14 Q I take it from your answer then that in
15 your view, the only thing you really need to know
16 is that silica is harmful; a person should not breathe
17 silica.

18 A Basically, I would say that is true, yes.
19 We are dealing with something that can be harmful
20 to a person; so, therefore, there should be some
21 method of control.

22 Q You don't necessarily feel like that it
23 is within your responsibility to concern yourself
24 with the degree of harm or the severity of dysfunction

1 is that it is harmful, what size it is, can we make
2 a filter to stop that size and you do that. Would
3 that be a correct statement?

4 A Almost.

5 Q Tell me where it is not correct.

6 A By law, by mandate - and I'm going to stay
7 with the law on this answer, even though you said
8 you didn't want to talk about Government stuff.
9 I'm going to stay with the law, because they do mandate
10 that there are certain kinds of particulates that
11 are very dangerous materials: arsenic being one
12 of them, silver, beryllium, radioactive materials
13 like plutonium. Those kinds of materials are very
14 highly hazardous in minute quantities. Therefore,
15 they will mandate what kind of respiratory protection
16 is required for those specific items. We have no
17 choice. They are anything from a high efficiency
18 air-purifying respirator all the way up to perhaps
19 self-contained breathing apparatuses.

20 Now, when you come back down to other than
21 those kinds of categories, then, yes, we are concerned
22 with how ---

23 Q (Interrupting) Are we talking about the
24 law or your view?

We're coming back to that.

1 You asked me are we only concerned about what the
2 thing is and what size it is and not concerned with
3 how harmful it might be.

4 Q I'm really just asking -- I summarized
5 your answer, in which you told me that your only
6 concern was whether or not it was hazardous, and
7 you left the rest of it up to doctors and industrial
8 hygienists and what have you.

9 Now, I just want to know if that is how
10 you personally feel about it or not.

11 MR. WHITTENBURG: He was trying
12 to explain it to you when you interrupted
13 him.

14 MR. SWEARINGEN: I'm not sure
15 what he was trying to do.

16 (By Mr. Swearingen)

17 Q Go ahead.

18 A What I'm trying to do is tell you, yes,
19 our main concern is the design of the respirator
20 itself, how it functions. Our concern also in
21 recommendation areas would be what are we dealing
22 with; what is the proper thing to match to the contaminant
23 at hand.

24 What I was saying before is that to design

to know what the actual

1 health effects of silica is in the lung, beyond the
2 fact that you want to stop it; that you don't want
3 it to be in there. But to know what actually happens
4 to the person's lungs after the fact and to know
5 the course of the disease and things like that, that's
6 what physicians are concerned with. You know, how
7 that happens, how they might be able to treat that
8 disease when someone gets it.

9 So, from our point of view, we are looking
10 at the article as a particulate solid in the air.
11 How do you stop that from getting into the airways
12 of a person's body; how do you do that. We do it
13 with filters, and that's how we do it. So, I would
14 say yes, that is our primary concern, certainly,
15 because we are making respirators. That's what we
16 are doing.

17 (AT THIS POINT A BRIEF RECESS
18 WAS TAKEN, AND THE PROCEEDINGS THEREAFTER
19 RESUMED AS FOLLOWS:)

20 (By Mr. Swearingen)

21 Q Mr. Scheel, you told me a few minutes ago
22 that an 8500 was not a respirator.

23 A That's correct. That's what I said.

24 Q What is your definition of a respirator?

an organization, we differentiate --

1 A respirator is approved for use against materials
2 that can potentially be harmful to your health if
3 inhaled. And I use "materials" in a broad sense;
4 anything that respirators are physically functioning
5 against stopping.

6 A non-respirator - a nuisance dust mask,
7 we call them - is essentially a - you might say a
8 convenience item to a person. It is useful in the
9 area where the material that is possibly being inhaled
10 will not harm you, at least as far as anyone knows -
11 the current state of knowledge of that that it will
12 not harm you. But it might be irritating. It gets
13 in your nose, and you don't like the feeling. It
14 may cause you to sneeze or cough, something like
15 that; similar to maybe reactions like ragweed pollen
16 or when people mow the lawn. You know, they will
17 get nasal irritation.

18 A nuisance dust mask can scrub out a fair
19 amount of that material out of the air and go a fair
20 bit against alleviating that kind of irritation.

21 Q When did your company develop and first
22 sell the 8710?

23 A The first sale of the 8710 to my knowledge
24 was in 1972.

1 A I'm not certain. It was the early 1960's
2 or somewhere in there, but that's just a guess. I'm
3 not certain.

4 Q Do you know anything about the history
5 of the development of the 8500?

6 A Anything? Yeah. I have heard some things
7 about it.

8 Q So have I. What have you heard? I heard
9 a funny story. Is that the same story you heard?

10 A The story I heard is the development people
11 were working with bra manufacturers for inner liners
12 for a bra made out of non-woven materials. And for
13 whatever reason, that did not work out. But then ---

14 Q (Interrupting) I take it that a bra
15 manufacturer apparently called 3M or did you all
16 make bras or what?

17 A I don't know. I have no idea.

18 Q Okay. Go ahead.

19 A I couldn't even tell you if the thing is
20 really true or apocryphal. But this was what I was
21 told took place.

22 Q Whether it's true or what?

23 A Apocryphal.

24 Q What does that mean?

- it's not - just a fancy story.

1 It has no basis in fact.

2 For some reason apparently it did not work
3 out. I don't know why. But that never happened,
4 that use for this molded non-woven. And then by
5 a source - and from who I have no idea - somehow
6 the jump was made that the molded non-woven could
7 in fact be a filter of sorts against certain kinds
8 of materials. And it ended up being an 8500.

9 Q Was it originally thought that it would
10 filter out certain materials that could be harmful
11 to you?

12 A I don't know.

13 Q You don't know that?

14 A No, I don't.

15 Q Have you heard it referred to as the "tittie
16 mask"?

17 A No, I have never heard that.

18 Q You can add that to your story. I have
19 heard it.

20 MR. WHITTENBURG: Why don't you
21 tell him your story.

22 (By Mr. Swearingen)

23 Q I've been told by people that have actually
24 used these things that in the early years they still

heard that?

1 A No, I never heard that.

2 Q Do you know how long it was sold in its
3 original configuration, whatever it may have been?

4 A Are you saying it was a different configuration
5 versus what it is today?

6 Q The configuration of a bra cup.

7 A I don't know. I don't even know that it
8 was sold that way.

9 Q You have not heard anything in the story
10 about that?

11 A No.

12 Q Do you know when they began to place a
13 metal clip on either of these respirators?

14 MR. WHITTENBURG: Are you referring
15 to the 8500?

16 MR. SWEARINGEN: Either one of
17 them.

18 MR. WHITTENBURG: As a respirator?

19 MR. SWEARINGEN: I'll refer to
20 them by numbers.

21 A The 8500 nuisance dust mask, no, I don't
22 know when it got a clip. First off, I don't know
23 if there was ever a time that there wasn't a clip
24 on it. I don't know that. So, therefore, I couldn't
even answer the question when it first went on.

1 The 8710, to the best of my knowledge
2 has always had a metal nose clip on it from the first
3 time it was sold.

4 Q I take it that none of your review of any
5 of these written documents - such as project reports
6 or anything - refer to this information that you
7 have talked about that you have heard?

8 A That's true, because my group didn't work
9 on anything on the 8500. It was an existing product
10 and not a new product.

11 Q Tell me about the testing of both these
12 products and your familiarity with it, how it's done
13 and what you have seen and what you know about it.

14 A Okay. On the 8500, that product is - has
15 specifications set up for the types of fibers in
16 it, the blend ratio of those fibers, the weight,
17 the amount of resin used as a stiffener for the shell,
18 how much is put on there, and then final - what we
19 end up with in the end is there are a lot of dimensional
20 type specifications. You know, it has to be a certain
21 size and the ribs have to be running a certain way -
22 which is by measurement, distances, this sort of
23 thing.

24 Then we measure things like flow resistance

1 of the shell.

2 Q Have you seen it tested for these things?

3 A Yes.

4 Q If it was an existing product that was
5 being sold when you went to work in this Department,
6 what was the purpose of testing it - if I am making
7 myself clear.

8 A No, you are not. Say that again.

9 Q You told me awhile ago that you didn't
10 know anything about the 8500, the development of
11 it ---

12 MR. WHITTENBURG: (Interrupting)

13 The origin of it.

14 Q --- the origin of it, because it was an
15 existing product that was being sold by your company
16 when you took your job; is that right?

17 A No, that's not what I said. You asked
18 me the question as to what my knowledge about that
19 was, as far as the job in development. I told you
20 we were not working on that because it was not a
21 new product. I said that we were not working on
22 it from a development point of view. There is a
23 difference.

24 Q I understand that. What was the purpose

1 it had already been developed.

2 A The purpose is ongoing quality control.

3 Every lot of materials that we make are subjected
4 to quality control testing.

5 Q It just comes in one size; is that right?

6 A That's correct.

7 Q Refresh my memory and tell me what job
8 you had and about what year it was that you first
9 became familiar with any kind of testing of the 8500
10 or the 8710.

11 A It would have been in the very first year
12 I was there in 1976.

13 Q And that was a part of -- As to the 8500,
14 it was a part of ongoing quality control?

15 A That's correct.

16 Q Tell me a little bit about how you conduct
17 your ongoing quality control program. Is it done
18 at random? Is it done every week, every day? Do
19 you pick out every 10,000 masks? How do you do that?

20 MR. WHITTENBURG: For the 8500
21 or the 8710?

22 MR. SWEARINGEN: 8500.

23 A The 8500 - there is a quality control plan
24 issued and in place in the Division that specifies
all the test parameters it will go through,

1 the frequency at which those are done. By "frequency",
2 I mean by that out of every "X" number you make,
3 how many do you pull out and actually test; and not
4 in time span, per se. And what the specifications
5 are that you've got, that you are looking for conformance
6 to or non-conformance. That is all in one big quality
7 control package.

8 Q Do you all originate the package or does
9 it come from some other source?

10 A It comes from 3M.

11 Q Well, you are 3M. It comes from some other
12 Department or ---

13 A (Interrupting) No, it's developed by our
14 Quality Assurance Department inside of OH&SP.

15 Q That's not within your responsibility;
16 is that right?

17 A That's correct; it is not.

18 Q Without getting into that rigmarole, it
19 comes from someone other than you?

20 A Oh, yes, that's right.

21 Q Under that package who has to make the
22 test? Does that come under your direct responsibility?

23 A The specification testing is done by Quality
24 Control personnel in the plants themselves where

1 Q Help me a little bit. You've said that
2 you have seen it done many, many times.

3 Were you just a casual observer, or was
4 it something that was done as a part of your
5 responsibility or that of the people that work under
6 you?

7 A Originally it was done by my own choice
8 because I wanted to know how it worked, you know,
9 what tests were done, how were they done, what the
10 purpose of them was - as a general learning curve
11 about respirator design and the response curves of
12 input to a respirator, in terms of pressure drops
13 and penetrations, things like that, what do you get
14 out of them.

15 After that on the 8500 it would be as a
16 casual observer. When I'm in the plants it is going
17 on all the time, and you see it happening. But in
18 that sense, yes, it is as a casual observer now because
19 I know what they are.

20 Q How would the Quality Control people conduct
21 the tests that you have seen going on in the various
22 plants? Just physically, how is it done?

23 A It is physically done by taking samples
24 of the material - and I don't mean the finished product.

the raw materials that go into

1 the thing, too. But at any given stage where you
2 are testing, you take a percentage of the total lot
3 size that you have ---

4 Q (Interrupting) Let me interrupt you.
5 I'm not interested in the raw product.

6 Tell me what you have seen as the testing
7 of the Quality Control people of the finished product,
8 if that will help you eliminate some of your answer.

9 A Sure. They take a certain number of the
10 masks from a lot, which is a certain size setup;
11 and that number is determined, depending on what
12 the attribute is that they are looking for. It is
13 determined in the Quality Control plant. It tells
14 them how many to take. Then they are done on the --
15 You take them and do the testing on them. And based
16 on your results, you either have conformance or non-
17 conformance to the specifications.

18 Q What have you seen them do to the finished
19 product in the way of testing?

20 A Pressure resistance, airflow through it,
21 and rigidity - how stiff the shell is.

22 Q How do they do that?

23 A Pressure resistance is putting it into
24 a holder, and you run airflow through it at 85 liters
per minute and you see how many millimeters of water

1 column pressure the differential is in it.

2 Q You use a machine for that?

3 A Yes.

4 Q What else?

5 A And stiffness of the shell. That again
6 is done by a machine. It's a bending stiffness type
7 thing.

8 Q Any other tests that you have observed
9 that are done to the finished product?

10 A By measurement you are looking at band
11 length, placement of the staples, where they are
12 on the shell. You look at the nose clip to see where
13 it is positioned on the shell, both side-to-side
14 tilt and up and down from the edge; what the bonding
15 strength of the adhesive is to hold the nose clip
16 to the shell itself. That's done by measurement,
17 by pulling it off. Actually, we don't believe right
18 now -- Well, I'm not going to say, because I'm not
19 sure. I don't think we do that as a number. We
20 are looking to see that we have to tear up the shell
21 to get the clip off, rather than having an actual
22 pounds/force pull type thing on it.

23 Q Is the same type of testing done on the
24 8710 that you have described to me on the 8500, or

A Those same tests are done on the 0500 and the 8710 and many more.

Q I want to talk about tests that you have seen performed.

A Okay.

Q First, let me ask you: Are they all done as a function of Quality Control?

A Yes, they are done by the Quality Control Department; yes.

Q And there are no tests done on either finished product that is done by your Department?

A That's correct, yes.

Q Or any other Department, other than Quality Control?

A When you say that, I will qualify it by saying that for the purpose of release of a product for sale to the field, only Quality Control is involved in that. Certainly, our R&D people do test products, in the sense of certain experimental items that they make, using the same sorts of tests. But for the finished product, for the 8710 to be sold to the marketplace, that would be Quality Control in the plants. That Department does it.

Q Have you ever witnessed any testing done

1 A Yes.

2 Q Tell me what you have seen that is any
3 different from what you have seen done to the 8500.

4 I'm just trying to avoid repeating everything
5 that you said about the 8500.

6 You do all of that with an 8710 but more?

7 A Correct.

8 Q I'm interested in the "but more."

9 What else have you seen ---

10 MR. WHITTENBURG: (Interrupting)

11 Are you talking about as a finished
12 product?

13 MR. SWEARINGEN: Yes, finished
14 product.

15 A On the 8710, what I have seen is we have
16 penetration testing that takes place, also; meaning
17 determining percent efficiency of the filter media.

18 Q How is that done?

19 A It's done using a - the same aerosol that
20 is used to test high efficiency filters, the one
21 we talked about earlier, the .3 micron DOP.

22 Q Is it done with a machine?

23 A Yes.

24 Q What else have you seen done, either in
Research & Development or out in the factory by Quality

1 Control people?

2 A We test such things as band strength on
3 the 8710, how hard it is to pull the band off the
4 outer cover whip. Other than that -- Based on what
5 I told you on the other thing, the rest of it is
6 measurement, symmetry-type things, where the bands
7 are placed on the shell, where the nose clip is -
8 again, in relation to the edges of the mask.

9 Both of them also have a lot of visual
10 standards to them. In other words, if you turn a
11 respirator over and it's all fuzzy on the inside,
12 that's not allowed. It has to be smooth. You can't
13 have dirt in it or foreign matter. Those are visual
14 things that are checked for, rather than measurement.

15 So, the biggest difference I would say
16 of the things we do on the 8710 versus the 8500 is
17 we look at different kinds of bands, so there is
18 a different band strength test, and you are looking
19 at the percent efficiency of the filter itself.
20 This testing is done for that.

21 Q The band strength test - is that just to
22 see how much force has to be applied to pull the
23 band out of the respirator or out of its fastening?

24 A That's correct.

Is that the purpose of it?

1 A That is the purpose of it.

2 Q It's just to make sure it's a durable product?

3 A Just to make sure that it stays on there,
4 that's right, under normal usage.

5 Q Any other tests that you have observed,
6 yourself, either in Research & Development or in
7 the field, in the factory, wherever?

8 A On the final product, the finished product?
9 No. That's basically it.

10 Q Do you think that that's all the testing
11 that needs to be done in your way of thinking as
12 a casual observer? Have you ever had the thought
13 that maybe they ought to do some other kind of test?

14 MR. WHITTENBURG: On the final
15 product?

16 MR. SWEARINGEN: Yes.

17 A No, I never had. The primary characteristics
18 that we are looking for is percent efficiency of
19 the filter and pressure drop, breathing resistance.

20 Q Insofar as you are concerned, does your
21 company properly test for those elements?

22 A Absolutely.

23 Q Can you think of anything further that
24 they should do in your opinion to test for that?

product? No.

1 Q Have you ever seen - and I assume that
2 you have not - have you ever seen a test done where
3 this mask was actually worn by a person during the
4 test?

5 A Seen a test done with a mask being worn
6 by a person?

7 Q Yes.

8 A Yes, I have.

9 Q I didn't think that you had. Tell me about
10 that one.

11 First, let me ask you where you saw the
12 test.

13 A I have seen the test in our own laboratories.

14 Q In Research & Development?

15 A Yes.

16 Q And not in any other lab; not in your Department
17 or anything?

18 A Well, when I say our laboratory - we all
19 live in the same lab. It's the OH&SP Laboratory.
20 We all live there. And the titles of our functions
21 are separate, but we are all physically in the same
22 place.

23 So, yes, it was in our laboratory that
24 this occurred. And what it is, I have seen a lot

concept known as total inward leakage,

1 which is part of the approval functions as they exist
2 in Germany, the United Kingdom, Scandinavia and Australia.

3 And that requires using human subjects with masks on.

4 Q What type of testing is done there?

5 A It's a concept called total inward leakage.

6 Q Tell us what that means in layman's terms.

7 A Total inward leakage is you choose a very
8 difficult particle to filter, as difficult as you
9 can find, to anticipate -- We don't choose it. I
10 mean other particle scientists do that, particle
11 technologists choose those.

12 Q Are they particle technologists that work
13 for 3M?

14 A No, they are generally chosen from outside.
15 They work for people like Los Alamos Scientific Research
16 Laboratory, those kinds of people. They choose a
17 very highly penetrating, difficult filter particle.

18 Q Do you choose the most difficult type?

19 I believe you said that awhile ago.

20 A You try to choose a most difficult type.
21 Whether the one that is actually used is the absolutely
22 most difficult, I couldn't tell you that. There
23 may be another that may be slightly more difficult.
24 I don't know.

they are very hard to stop.

You put that aerosol into some sort of a chamber so that it encloses the human subject, and you measure directly with machines what totally gets into the breathing zone of the worker or the subject in this case. They may or may not be workers; they are not necessarily workers. And that is called total inward leakage - inward leakage from all sources possible of that present material. And there are upper limits set then on what the percent inward leakage can be in those countries.

Q What is the key aspect of respirator design that will affect that inward leakage problem?

A The key aspect in that case?

Q Yes.

A Most definitely it is the filter media itself which is the limiting factor there.

Q Do you know what chemicals or particulates are used in any of these tests that you have seen?

A Yes.

Q What are they?

A Sodium chloride and paraffin oils - paraffin oils in the form of a mist.

Q Paraffin oil?

A Uh-huh. That one has fallen out of favor lately. It's not used much anymore.

1 Q How many times have you seen that done?

2 A I've seen it done three or four times.

3 Q And it was done to meet specifications
4 of foreign countries?

5 A That's correct.

6 Q Would you agree that in addition to testing
7 the filter medium, that that test is also designed
8 to test the fit of the respirator on the subject?

9 A Certainly. Like I said, it's total inward
10 leakage. It's leakage from all possible sources.

11 Q When you say leakage, isn't that the primary
12 thing that you are testing, really, is respirator
13 fit and not respirator material?

14 A No, sir, that is not correct. In total
15 inward leakage you are testing everything and not
16 just face seal leakage.

17 Q Have you ever observed your company doing
18 any just fit testing?

19 A Yes, I have.

20 Q Tell me about that. When and where?

21 A In our laboratory, looking at our product
22 line and our competitors', and going through the -
23 what is more or less a standard protocol for fit
24 testing these days. They used to use DOP, and now

1 Q What is DOP?

2 A Dioctylphthalate.

3 Q Which one of them smells like bananas?

4 A Isoamyl acetate smells like bananas.

5 Q Do you all ever use that?

6 A Not much. That is strictly a test that
7 is just used for chemical cartridges mostly for a
8 quick fit check, with the exception of the duPont
9 protocol that's in the lead standard that you can
10 look at. That has to do with chemical cartridges
11 totally.

12 Q That's another Government standard?

13 A The lead standard is, yes. That's an OSHA
14 standard.

15 Q Tell me about the fit testing that you
16 have seen done. When did you see that?

17 A I've been seeing it going on for the last
18 four years or more, four or five years.

19 Q Do you see it going on all the time or ---

20 A (Interrupting) No.

21 Q You said that you had seen the other test
22 three or four times.

23 A Yes, because that is one that we run for
24 foreign applications.

For foreign countries?

1 A Yes. I have seen this one more than that.

2 It doesn't go on all the time. It is generally done
3 in terms of research work, in looking for the responses
4 of how things fit on human faces.

5 Q Well, is it done on the 8710?

6 A Not directly, no, because the 8710 -- The
7 concept of face fitting now changes radically from
8 total inward leakage. Face fitting - it used to
9 be known as protection factor, and now it tends to
10 be called fit factor.

11 This is the concept of only looking at
12 the leakage that occurs through face seal leak or
13 through other areas, other than the filter media;
14 particularly if you have valves, gaskets, things
15 like that, in the respirator design.

16 Q The 8710 doesn't have any gaskets or valves
17 or anything, does it?

18 A No, it does not.

19 Q Neither does the 8500?

20 A No, but you wouldn't fit test an 8500 in
21 the first place. It's not a respirator.

22 Q Let's talk about the 8710. Have you seen
23 it fit tested?

24 A I have seen it fit tested, yes. But you
were asking me if we do it on it, and I said not

1 directly.

2 When you're looking strictly at face seal
3 leakage and other forms of leakage, other than the
4 filter media, then you must be able to separate filter
5 media penetration from face seal leakage. The only
6 way that you can really physically do that is to
7 reduce filter media penetration to as near zero as
8 you can get so that it essentially is not there.
9 The typical way that that's done is to change the
10 filter media of the respirator that you are working
11 with to the high efficiency types that we were talking
12 about earlier that will -- Because now the corn oil
13 or the DOP that is being used is not the same as
14 the one that is in the test.

15 Q Is the 8710 a high efficiency ...

16 A No, it's not, and I was going to get to
17 that. That's why you cannot directly test it, not
18 directly.

19 We have done that experimentally on looking
20 at altering the filtration efficiencies of the 8710,
21 just for the purpose of fit testing, yes.

22 But what we have done in fit testing really
23 is to develop the saccharin protocol that allows
24 you to fit test the respirator in the so-called super-

1 Q Have you ever put an 8710 on a man and
2 put him under a hood or in an environment to see
3 if there was leakage around an 8710, just like it
4 comes off the factory line?

5 MR. WHITTENBURG: Has he?

6 MR. SWEARINGEN: His company
7 to his knowledge.

8 A Put a person into a hood to see what; to
9 look for face seal leakage?

10 Q Just take an 8710 right off the factory
11 assembly line, put it on a human subject, put him
12 under a hood or in a room or whatever you do to introduce
13 some test chemical to see if it leaks around the
14 edges.

15 A Yes, we have done that.

16 Q When and where?

17 A We did that the last - two years ago for
18 quite a bit of time while we were developing the
19 saccharin protocol for the lead standard.

20 Q Why did you develop the saccharin protocol?

21 A We did that because, as I explained before,
22 you cannot use the challenge aerosols that are in
23 the standard face fit machines that are sold because
24 you are not able -- Unless you can use high efficiency

respirator you cannot separate filter

1 media penetration from face seal leakage. It can't
2 be done.

3 So, with the 8710 where you cannot change
4 out a cartridge to change it, what we had to do was
5 to show, develop and then prove the case, that another
6 form of an aerosol would effectively be stopped to
7 a very high degree by the filter media; in other
8 words, filter penetration tending toward zero - very
9 small. But they would still find leaks in the face
10 seal, adequately, just the same as a quantitative
11 face fit does.

12 Then, if you can do that, you could directly
13 measure the face seal leakage of the product.

14 Now, what we have done is that we did that
15 in terms of a qualitative test. In other words,
16 we are not sampling the aerosol directly inside.
17 We are using taste response for this one. And it
18 has all been verified by correlation to the standard
19 quantitative face fit that it works. It's in the
20 lead standard record. You can read it all there.

21 Q How would I find your company's records
22 about those tests on developing that saccharin protocol?

23 A The company records - it would be one and
24 the same thing: What is in the lead record is our
25 submissions to them.

1 Q Is there anything that your company would
2 have that would not be in the lead test publication?

3 A I don't think so, no.

4 Q Where would I find your company's records,
5 if I wanted to look at them instead of the publication?

6 A I don't know. I would have to go look
7 and ask where the copies of the submissions are.

8 Q Were you involved in the development of
9 the saccharin protocol test?

10 A Not directly, no, I was not.

11 Q Who was, your Research & Development people?

12 A Yes, a team of people. A lot of people
13 worked on that: Quality Assurance, R&D people.

14 Q What you know about that is what you have
15 learned as a casual observer; is that right?

16 A A little more than casual. I was highly
17 interested in what was going on.

18 Q But it was not your job responsibility,
19 was it?

20 A No, it was not my job responsibility.

21 Q In fact, none of this testing that we have
22 talked about today that you have seen - none of it
23 was under your direct control and none of it was
24 your job responsibility, was it?

-- A That is true.

1 Q And if your company as a sophisticated
2 manufacturer was selling this product to a sophisticated
3 distributor, you would not tell him that it was a
4 high efficiency respirator, would you?

5 A No, I would not. I would tell him it was
6 a dust/mist respirator.

7 Q Because if you told him that, it would
8 be a misrepresentation, wouldn't it?

9 A If I told him that, certainly, because
10 I know better.

11 Q Because by the simple term and the terminology
12 as it is understood in the trade, if you told him
13 that you would be representing that the respirator
14 was of a higher quality than it really is, wouldn't
15 you, if you told him that it was a high efficiency
16 and it really wasn't?

17 A I would not say higher quality. Different
18 filtration efficiency. Both of them are high quality
19 things for what they are meant to do.

20 MR. SWEARINGEN: Please mark
21 this.

22 (A COPY OF A 3M PRICE PAGE WAS
23 MARKED BY THE REPORTER AS EXHIBIT 1.
SAME WILL BE FOUND AT THE CONCLUSION

1 (By Mr. Swearingen)

2 Q I'm going to hand you what the court reporter
3 has marked Exhibit 1. It is a Xerox copy, and I
4 have been furnished this. Do you recognize it?

5 A Yes, it is a 3M price page.

6 Q A 3M price page?

7 A That's correct.

8 Q Who does it go to?

9 A Our sales representatives would have this,
10 and it would go to -- Let's see what this is. It
11 is "Suggested Net Price Per Case To Consumers," so,
12 it goes to consumers. The distributors would have
13 this, and it may or may not be given to like a purchasing
14 agent as to what the consumer prices are.

15 Q Does it have information on it other than
16 prices?

17 A It has some descriptive terms here, yes,
18 on the right-hand side of what we would call the
19 features of the respirator.

20 Q What respirator does it address itself to?

21 A The 8710.

22 Q Does it describe it as a high efficiency
23 respirator?

24 A It describes it -- The statement is in

comfortable high efficiency

1 respirator."

2 Q Does it describe it as a high efficiency
3 respirator?

4 A That is a statement that is made there.
5 Whether that is purported to say high efficiency
6 in terms of the definitional terms of the .3 micron
7 test, I don't know. It doesn't say that.

8 Q Well, if it went from a sophisticated
9 manufacturer, which is your company, to a sophisticated
10 distributor or supplier or distributor, and he read
11 that, he would certainly be entitled to think that's
12 what you wanted him to understand about that, wouldn't he?

13 A I don't know if he would or not.

14 Q Didn't we agree that sophisticated users
15 would understand that high efficiency to mean something?

16 A When we talked about being familiar with
17 the NIOSH approval testing, that's right.

18 Q We tied it down just awhile ago, too, and
19 we were not talking about NIOSH, were we?

20 A No, I have always said I think we tied
21 it strictly to the NIOSH test every time.

22 Q Just tell me, sir: Does the brochure that
23 was published by your company represent that it is
24 a high efficiency respirator or not?

that that is true.

1 because if it was said "high efficiency" meaning
2 the .3 micron type, my opinion would be that there
3 would be a subnote under that that would describe
4 what that meant - the same as down here where it
5 tells you that it is not high efficiency. It says
6 "Certificate of Approval TC-21C-132 ..." It tells
7 you that it comes from the U.S. Bureau of Mines and
8 NIOSH, and that the 3M 8710 is a single-use air-
9 purifying respirator for respiratory protection against
10 pneumoconiosis and fibrosis-producing dusts, including
11 but not limited to aluminum, asbestos, coal, flour,
12 iron ore or free silica.

13 Someone who is very familiar in the art
14 of the jargon of respirators, when they read that
15 and see "single use" they know exactly that that
16 is in no way in anybody's imagination a high efficiency
17 respirator.

18 So, I would say what they are doing up
19 here is that they are saying that this respirator
20 has a good efficiency against particulate matter,
21 because they do. Even dust mists - they are very
22 high in their particulate efficiency.

23 Q So, you're saying that the true description
24 is in very fine print that is about one-half or less

1 is that what you're telling us?

2 A No, I didn't say that it was misleading.

3 Q Well, you can look at it. Is it about
4 half the size of the print?

5 A It's about half the size. But, I'll tell
6 you the truth: When I got down to the bottom of
7 the page, I didn't know what you were talking about,
8 because I didn't see it in the corner. It was the
9 last thing I saw.

10 MR. WHITTENBURG: When I pointed
11 to it?

12 THE WITNESS: That's true.

13 (By Mr. Swearingen)

14 Q You saw it when your lawyer pointed it
15 out to you?

16 A Yes. I didn't even notice it in the beginning.
17 So, I would not say that what is down at the bottom,
18 the complete accurate description, is hidden more
19 than what is up there on the left-hand side.

20 Q Do I understand your earlier testimony
21 to be that you would describe an 8710 as a dust slash mist
22 respirator?

23 A Yes, at the present time that is true.

24 Q Was it true in 1973?

1 in 1973.

2 Q Which means?

3 A That is a different form of approval given
4 by NIOSH. It limits the 8710 primarily to the
5 pneumoconiosis- and fibrosis-producing dusts. It
6 would not be used against a chromic acid mist, let's
7 say, at that time, nor lead dust at that time, like
8 it can be today.

9 Q Can it be used against asbestos today?

10 A Yes, sir. It still holds that approval.

11 Q Do you think it is effective?

12 A Yes, sir.

13 Q Part of your job is actually drafting up
14 and drawing up what goes on this kind of stuff, isn't
15 it?

16 A On those, no, not particularly. Those
17 are promotional sheets. They are not technical sheets
18 at all. Technical sheets are the instructions that
19 go into them. That we are involved with directly.

20 Q You are not involved at all with the promotional
21 stuff?

22 A Since I have been around, only to read
23 it for technical accuracy, yes.

24 Q If you were asked to read this today and

1 your response be?

2 Would you approve this for distribution,
3 or would you suggest that maybe they ought to take
4 off the "high efficiency"?

5 A I think I would answer it with today's
6 knowledge of what I know about customers and how
7 they react to what they know.

8 There aren't many sophisticated ones in
9 my experience. I would probably say yes, we ought
10 to qualify that, just so there is no possibility
11 of someone reading that and not reading the rest
12 of the page down here where it tells you exactly
13 what it is approved for. That would be today, I
14 would certainly probably do that.

15 Q Is that because most of the users don't
16 really know anything about the Bureau of Mines or
17 NIOSH or OSHA or anybody else and what their regulations
18 set forth?

19 A I don't know.

20 Q Is that one of the reasons?

21 A I don't know how much they know or not.
22 The U. S. Bureau of Mines is not really much into
23 it anymore.

24 But, no, I don't know exactly what they
discussed it with

1 most of our customers. They are interested in which
2 respirator of ours is the one to be recommended,
3 and not for me to tell them how they are tested.

4 Q You have some knowledge. You have referred
5 several times to what you know about sophistication
6 of your ultimate users.

7 A Yes.

8 Q You have studied it and you know something
9 about it.

10 A From experience, yes; and from talking
11 to them, yes.

12 Q So, when it comes to drawing up instructions,
13 for example, you don't find it very useful to say
14 "Use this in accordance with OSHA standards or certain
15 Bureau of Mines standards," because your users are
16 not that sophisticated generally, are they?

17 A We do do that anyhow because some might
18 be. There's a mixture. We don't know up front.

19 Q But to do it right, you have to go further
20 than that with an unsophisticated user. You have
21 to give him something that he can understand, don't
22 you?

23 A No, not at all. It depends on who you
24 are defining as a user.

If you're talking about the person at the

1 end who is wearing the product, that is not who we
2 ~~are aiming~~ our materials at particularly. I mean,
3 the material for wearing it aimed there; but the
4 materials of what we are trying to teach and convey
5 about what the respirator is for is for that person's
6 employer or supervisor, whatever, because they are
7 the ones with the ultimate responsibility to choose
8 a respirator program and for training of the worker
9 himself.

10 Q As far as your company is concerned, they
11 have the ultimate responsibility?

12 A And as far as the law is concerned.

13 Q Do you know that law?

14 A It comes under the OSHA regulations.

15 Q Do you know anything about Texas law?

16 A No, I can't say that I do.

17 Q I'm going to tell you something about it.

18 The employer doesn't have to do anything.

19 MR. WHITTENBURG: That's wrong.

20 That's a misstatement of the law,
21 and do not answer any question based
22 upon an improper statement of the law.

23 MR. SWEARINGEN: Well, if he's
24 going to give answers as to what the
law is I can ask him questions about

1 the law.

2 MR. WHITTENBURG: You can, if
3 you know what the law is.

4 MR. SWEARINGEN: Can I not?

5 MR. WHITTENBURG: Yes, sure,
6 if you know what it is, you go ahead.

7 MR. SWEARINGEN: I know what
8 Judge Parker thinks it is.

9 (By Mr. Swearingen)

10 Q Then do I understand you to say that as
11 far as your company is concerned, you don't worry
12 about what you send on to the ultimate user; you
13 worry about what you send his employer?

14 A No, I didn't say that at all.

15 Q Let's be real clear about what your company
16 thinks they need to tell the ultimate user and what
17 they think they don't have to tell him under the
18 law or under your policy or whatever you want to
19 call it.

20 A The ultimate user - what we provide on
21 the respirator is instructions for use and certain
22 disclaimers.

23 In the case of an air-purifying respirator
24 like this one, it would be that it doesn't supply
oxygen so don't go in an oxygen-deficient atmosphere.

1 All of those things necessarily have to
2 be -- I wouldn't call them perhaps high technical,
3 but they are - they require some understanding.
4 Now, that understanding -- We are worried about making
5 a product that will physically function on the end
6 wearer. That is our worry in his sense.

7 We are also worried about whether instructional
8 materials might be used by the employer, because
9 they are the ones that are running the respirator
10 program. I am not aware of workers running a respirator
11 program. The employers do that. Those are the people
12 that need to see instructions, and they have the
13 responsibility then to train the workers on how to
14 use this product and when not to use it, under what
15 circumstances to use it.

16 Q Who needs to know that you can't use an
17 8500 if you are on a sandblasting pot?

18 A The employer of the sandblaster.

19 Q As far as your company is concerned, you
20 don't owe any duty nor do you make any effort to
21 get to the ultimate user the information that he
22 should not use an 8500 if he's sandblasting; is that
23 true?

24 A No, it is not. We give that information

1 that is given to the employer. That employer is
2 then to receive all of the counseling from us that
3 he wants, simply by asking. He can get it from the
4 sales representative, he can get it from Technical
5 Services, all he wants.

6 And in the end, as you purport, someone
7 wound up wearing an 8500 in direct sandblasting,
8 it certainly didn't come from us.

9 Q No, because you didn't try to get it to
10 him, did you?

11 A Yes, we did, through the employer, which
12 is our only practical avenue of doing it.

13 Q I understand that, sir. I think you're
14 answering my question, but I want to make real sure
15 that you are.

16 You're telling me -- And I'm using the
17 example of an 8500 used in sandblasting, just as
18 an example of your company's policy and attitude;
19 okay?

20 A Yes.

21 Q I'm using that as an example.

22 MR. WHITTENBURG: An example
23 of their attitude?

24 MR. SWEARINGEN: Yes. Well,
the question I am fixing to ask is.

1 (By Mr. Swearingen)

2 Q Your policy - whatever you want to call
3 it - "attitude" may be a bad word.

4 Your company's policy, your understanding
5 of the law and what your company is trying to do,
6 using the 8500 as an example, you're going to do
7 your best to inform the ultimate user's employer
8 of the fact that it should not be used for sandblasting.
9 Now, that is your main objective; is that right?

10 A Yeah, in the terms of what you're talking
11 about, that's correct; by describing it for what
12 it is: a nuisance dust mask.

13 Q And under your philosophy or your policy,
14 that is the end of your duty or responsibility, insofar
15 as getting that information to the ultimate sandblaster/
16 user?

17 A I would have to say yes, because we don't
18 have access to those people.

19 Q And you don't try to put any kind of warning
20 or information on the mask itself?

21 A We don't have to. The relatively sophisticated
22 people that we have been talking about - the employers -
23 it is their responsibility to know what kind of
24 respiratory protection is or is not practical and

and they don't know it, they are supposed

1 to get it. They can get it from us or their local
2 Department of Health, the local OSHA office, call
3 NIOSH. They can go read the OSHA standards, if they
4 get that far.

5 There are a whole bunch of places that
6 they can get this information. And when we describe
7 the 8500 as a nuisance dust mask, there is no way
8 on earth that anybody who has gone and fulfilled
9 their obligation to check out what is right would
10 ever come up with the 8500 as a recommendation for
11 a sandblaster. Never!

12 Q And that example would apply to the other
13 respirator that you manufacture, without rehashing
14 each one and going over the same thing. We can use
15 that example to illustrate your company's policy
16 about getting information to the ultimate user of
17 any of your respirator products?

18 A That is for the sandblaster himself.

19 We talked earlier about the fact that the
20 8710 might be apropos for people who are operating
21 around the edges of sandblasting.

22 Q Do you feel like you have a duty to get
23 information to the ultimate pot tender wearing an
24 8710?

1 get it to the 8500 user.

2 Q It all applies the same way; right?

3 A It all applies to the employer.

4 Q And you feel like that once you get that
5 information to the employer, you have met your duty
6 and you have no further work to do?

7 A In the sense that the employer is the one
8 who is in the end responsible for running the correct
9 respirator program for his employees, that is what
10 we are trying to do: Get information to the person
11 responsible.

12 Q Sir, I am not talking about in the sense
13 of what employers should do; okay?

14 I'm talking about in the sense of what
15 your company feels like they have an obligation to
16 do and what in fact they do do.

17 A As far as I know, that is our obligation:
18 to follow what we think is the right way to get that
19 information to the worker, which is through the
20 responsible party, the employer.

21 Q And as far as whether or not your company
22 has ever considered alternatives, such as placing
23 some type of warning on the respirator itself or
24 placing - stapling a leaflet or pamphlet to the product

1 have not considered any of those because you don't
2 feel like that's the way to do it; is that right?

3 A We have considered it, and we have said
4 no, we don't think that's the way to do it.

5 It goes on the boxes. I'm talking here -
6 when you said leaflets or something stapled right
7 to the respirator, each individual one. If you wanted
8 to go and try to give all the possible warnings on
9 a leaflet or printed on the respirator that would
10 come up in a discussion with the employer, who is
11 the one who knows what the hazards are - I don't
12 know of anybody's respirator that could hold all
13 of that, because it's just too many words to do it.
14 So, we have to go back to the fact that you give
15 generic - no, "generic" is not the right word - a
16 description of the respirator, what it is usable
17 for - much as is on that piece of paper in front
18 of you there where it describes the TC numbers and
19 what you use these things for.

20 Then the responsible party starts to perform
21 what is sometimes called good industrial hygiene
22 practice. He identifies the hazard - sandblasting
23 in this case. The hazard is the sand, both from
24 a physical hazard and an inhalation hazard. He then

of quantification. how much -

1 especially if you're talking about the pot tent
2 let's say.

3 Then he goes for control measures. In
4 general, a control measure for sandblasting is a
5 form of air-fed hood that is designated to be a sandblast
6 helmet.

7 If he doesn't know all of that in his head,
8 just right off the bat, then he is obligated to go
9 find out, because he is the one that is responsible
10 to run that program, to protect that employee that
11 is in his employ. And we are just one of the sources
12 that are more than happy to give that information,
13 to lead him down the right track.

14 Q Have you been involved personally in testing
15 any of your competitors' products?

16 A Once I personally tested it, yes.

17 Q What did you test?

18 A It was not a U.S. respirator. It was in
19 fact a respirator from France.

20 Q Has your company been involved in testing
21 competitors' respirators?

22 A Yes.

23 Q What would you say that your competitors
24 have that is comparable to your 8710?

1 make a disposable respirator in the same - more or
2 less the same design concept as our 8710. There
3 are also ---

4 Q (Interrupting) Who are they?

5 A Glendale and AO, for instance, make them,
6 in the terms that they are approved dust respirators.
7 They also -- Anybody's rubber facepiece half mask
8 respirator that is equipped with dust/mist filters
9 performs the same function as an 8710.

10 Q Are you familiar with testing that has
11 been done to compare your competitors' products'
12 performance to that of your own?

13 A I might be. It depends on what you are
14 speaking of.

15 Q I am speaking of any testing done to compare
16 your competitors' products to your own.

17 A If you are asking me am I aware that has
18 ever taken place, yeah. Whether I am familiar with
19 it specifically -- one that you might ask about -
20 I don't know.

21 Q I don't know about them, sir. I'm trying
22 to find out where I would find them.

23 Where would I find the results or the recordings
24 of such testing?

I don't know. We don't have them. I'm

1 just aware of the fact that they took place.

2 Q Is it ever used in the sales part of the
3 training that you know of where your salespeople
4 are given information about competitors' products?

5 A In terms of that, generally what we would
6 talk about there would be things like weight, vision
7 obstruction, pro or con, you know, more or less;
8 the kind of things that are perceived by a wearer:
9 Is this one heavier than that one? Is he more likely
10 to want to wear this one than that one? To my knowledge
11 we don't get into talking about filtration efficiencies
12 and how filters work, except in the sense of which
13 ones are useful for what.

14 An example would be like our own 8712 is
15 a gas and vapor respirator for organic vapors. We
16 would tell them to not use that for acid gases because
17 there is another one for that. In that vein, that's
18 how we get the point across.

19 Q Let me ask you this: Do you ever get
20 information from Research & Development, for example,
21 that says, "We have tested the 8710 as it compares
22 to ABC Corporation's respirator, and we have them
23 beat in these areas. Pass it on to your sales force"?
24 Has that ever come through your office?

1 that.

2 Q Would any other Division of your company
3 do that and pass that information through your office
4 to the salespeople with whom you have some contact
5 in your training program?

6 A We have periodically looked at competitive
7 products. As I said, we don't concern ourselves
8 too much about that. We tend to concentrate on our
9 own performance of our own products. And when a
10 new one comes out, perhaps on the market that has
11 never been seen before, probably what we would do
12 generally is run it against the NIOSH approval test,
13 just to see where they stand. But normally we wouldn't
14 write that up and run out to the sales force and
15 say, "Oh, Boy, we're 2% better than these guys; isn't
16 that wonderful." That's not what the end customer
17 is worried about, the employer. If you are NIOSH
18 approved, he has a certain trust level that he is
19 buying your respirator for other reasons and for
20 other design concepts and for the service he gets
21 from the 3M Company, price; they all enter into the
22 decision logic.

23 Q Do you know Don Bevis?

24 A Don Bevis?

1 A No, not that name.

2 Q I have been furnished a rather voluminous
3 amount of documents from your company in response
4 to our request for information about your products.
5 I think it was yesterday or something.

6 MR. WHITTENBURG: It was available
7 all last week. You didn't return
8 the phone calls, and you didn't realize
9 until we called and told you that
10 it was available.

11 MR. SWEARINGEN: Who did you
12 call?

13 MR. WHITTENBURG: Diane, and
14 then we called back and called back
15 again. Finally, we got the word through
16 sometime last week.

17 (By Mr. Swearingen)

18 Q After I have had a chance to sift through
19 all of these documents -- Do you know of any reason
20 why you would not be available to testify at the
21 time this case is tried?

22 A At the time of trial, that I would not
23 be available?

24 Q In the next month or two, are you going
to be out of the country or on vacation or whatever?

1 A Yes, in the next month I will be out of
2 the country.

3 Q When and where will you go?

4 A Hong Kong in a month.

5 Q When?

6 A In a month's time I will be in Hong Kong.

7 Q Do you have some dates in case the Judge
8 wants to know when this case ought to be tried?

9 I would like for you to be available, if you can be.

10 A I'm physically leaving next Saturday -
11 this coming Saturday.

12 Q How long are you going to be gone?

13 A For quite some period of time. It's a
14 special assignment that I have over there.

15 Q Does it have anything to do with respirators?

16 A Not at all. It's about Thinsulate, as
17 a matter of fact.

18 Q Do you know how long you will be in Hong
19 Kong?

20 A No, not specifically.

21 Q I guess you may not be available for trial,
22 if this case is tried in the next month or two?

23 A I couldn't tell you. It's up to my company.

24 Q You could fly back from Hong Kong if they

want it?

1 A I suppose so, yes.

2 Q Did you participate in the gathering of
3 information or documentation that was delivered to
4 us by your company's lawyer; did you help him gather
5 any of that or have anything to do with it?

6 A No, I did not.

7 Q Are you a member of the ISEA - Industrial
8 Safety Equipment Association?

9 A OH&SP Division is. It's not a matter of
10 personal membership. It's company membership.

11 Q Do you participate in that trade group?

12 A I don't personally, no.

13 Q Do you know anything about its work or
14 what its purpose is?

15 A Its purpose is to - to my knowledge -
16 my understanding of ISEA is the gathering of safety
17 manufacturers, which may or may not be involved in
18 respirators; but to gather -- It's like a gathering
19 of people so that they can discuss concerns common
20 to their whole industry.

21 An example might be that they will discuss
22 amongst themselves the position of ISEA as it represents
23 ISEA and not the individual companies on what stance
24 they would take, pro or con, against the stance that

1 And they might put commentary into the record as
2 a group.

3 Q Are you familiar with their efforts this
4 past summer, in response to an OSHA inquiry, that
5 they recommended to OSHA that your 8710 not be approved
6 anymore for use with asbestos?

7 A My understanding of that is that their
8 recommendation - my understanding of their recommendation
9 was that the half mask air-purifying dust/mist respirator
10 not be used, which the 8710 was one of those.

11 Q That was their recommendation?

12 A I think so. I don't believe we were singled
13 out.

14 Q Are you familiar with your company's effort
15 and successful effort in having that recommendation
16 changed?

17 A Certainly, I know that was true.

18 Q Were you personally involved in that?

19 A Not personally.

20 Q Who was for 3M to your knowledge personally
21 involved in that?

22 A I really don't know. There was more than
23 one person. None of these things are done by one
24 person.

1 it. It was important to your company, wasn't it?

2 A You don't want me to give you names unless
3 I go back and verify that these people actually worked
4 on it.

5 Q We can do that. You give me names of people
6 that you think worked on it, and I will verify it.

7 MR. WHITTENBURG: Do you know
8 of anybody that you feel relatively
9 certain was involved?

10 A Relatively certain - the only one that
11 I would say that was involved was Don Wilmes,
12 W-i-l-m-e-s.

13 Q Who is Don Wilmes?

14 A He is a technical specialist in our Quality
15 Assurance Department.

16 Q Is that your Department?

17 A No, I'm Technical Services. This is Quality
18 Assurance.

19 Q What involvement did he have in resisting
20 that change?

21 A I don't know. Like I say, I'm sure that
22 he was involved - reasonably certain; but exactly
23 what he did, I don't know.

24 Q Did you talk to him about it? How did

1 MR. WHITTENBURG: He just got
2 through saying that he doesn't know
3 if he was involved. You asked him
4 for somebody that might have been
5 involved, and I pressured him to give
6 you the name.

7 (By Mr. Swearingen)

8 Q Did you talk to the man about it?

9 A In general, yes, because he knows a lot
10 of all about what is going on with Government regulations
11 in general, like I do. So, we talk all the time
12 about that.

13 Q Did he go to the meeting or whatever to
14 resist this effort?

15 A I don't know if he was a representative
16 there or not.

17 Q Did you talk with him after his successful
18 attempt to have it changed?

19 A I couldn't tell you that, because I don't
20 know that he was the man who was successfully attempting
21 to have it changed. I talked to him about it, yes.

22 Q And you do know that your company was successful
23 in its opposition in that the ISEA changed its position
24 to one of no comment?

understanding that that was

1 the case.

2 Q Are you familiar with the 1969 field test
3 of Procter & Gamble in Cincinnati, Ohio, involving
4 the use of your 8710?

5 A I don't think so. It doesn't ring a bell.

6 Q Are you familiar with any information that
7 would lead you to believe that one of the anticipated
8 uses of that 8710 is that a workman will fold it
9 and put it in his pocket when he is not actually
10 wearing it?

11 A The question is what, am I familiar that
12 people do that?

13 Q Yes, that that's one of the things that
14 you people try to anticipate is what a workman is
15 going to do with this mask when he is not using it.

16 I'm just asking you if you've ever gained
17 any knowledge from any source that a common practice
18 on the part of a workman is to fold that mask and
19 place it in his pocket when it is not actually in
20 place on his face?

21 A I'm certainly aware because people have
22 told me that workers have done that. Whether it
23 is common practice, I don't know.

24 Q Who would have told you that?

I don't remember. Probably a Safety fellow.

1 an industrial hygienist in one of the calls that
2 I was making over the years in the field.

3 Q Did you respond to that information to
4 see if it was true?

5 A Did I respond? I mean, if the man told
6 me that, I would expect that he was telling me the
7 truth, that workers have done that.

8 Q Did he tell you that when that happened,
9 it deformed the metal clip or broke the metal clip
10 and made the face seal improper on reuse?

11 A Nobody has ever told me that, no.

12 Q You testified earlier in response to one
13 of my questions that if you don't know the concentrations
14 of dust - it was in response to my hypothetical question
15 about a sandblaster calling you about the use of
16 an 8710 by a pot tender -- Do you recall that question?

17 A Yeah, I believe you asked me ---

18 Q (Interrupting) What would you tell them.

19 A Yes.

20 Q And somewhere in your response, I believe
21 you said that if you don't know the concentration,
22 then it is wise not to use the 8710; to go to an
23 air-supplied hood or something like that for your
24 pot tender; is that right?

I said if you don't know

1 it or have some previous experience to know that
2 the concentrations will be quite low -- Like I said,
3 if you are standing upwind in a good breeze and you
4 are outside and you are 100 feet away -- It is very
5 unlikely that that will be the case, so as a result
6 then the 8710 might be apropos. If they have some
7 reason to believe that the concentration could be
8 very high - if the guy is standing up in a cloud
9 of the stuff - we would say if you are not going
10 to have it measured as an employer, then what you
11 must do is go into the air-fed systems.

12 Q Do you know of any instructions that
13 accompany the 8710 that say anything to the effect
14 that if you do not know your concentration, use caution,
15 or be careful, or use a better respirator? Do they
16 say anything like that?

17 A Yes, in the sense that our things now tell
18 you to use it only in terms of 10 times the threshold
19 limit value.

20 You are also again back to the employer;
21 he is to run a good respiratory - minimal respiratory
22 protection program. That's what OSHA requires, minimal.
23 And part of that whole thing is to know what the
24 hazard is. So, he is to find that out. It is his

1 We go with the 10 times the threshold limit
2 value. We tell them what it is that it can be used
3 for, what it is approved for; and, therefore, it
4 leads him also to the recommendation as to what kind
5 of product might be used, and you can find it from
6 other sources other than us.

7 Q Does 3M Corporation have what some people
8 refer to in their personnel policy as career ladders?

9 A In our personnel policies?

10 Q Yes.

11 A Career ladders?

12 Q Yes.

13 A Maybe by another name. I don't know the
14 name. Career ladder means -- It means something
15 to me, but not in terms of that I have ever seen
16 it at 3M.

17 Q The thing that it means to me is that for
18 a young, aspiring young man, such as yourself, that
19 some companies sort of have a policy or procedure
20 where if you do a good job you will work in certain
21 Divisions for a period of time, and then you will
22 move to another to get a broad general concept of
23 the company's business in anticipation of being promoted
24 to higher levels of Management. I'm wondering if

1 A I don't think so. I am not aware of it
2 in the technical fields at all. Your jobs there
3 you get strictly by the fact of someone knows you,
4 knows of you, or you go searching for a job yourself,
5 if you know of one that is coming available and think
6 that you would be well-suited for it. And it is
7 done strictly on your ability.

8 Q Does 3M publish any kind of technical service
9 manual that applies to an 8500 respirator?

10 A A technical service manual? No.

11 Q Something that you would send out and say
12 this is an 8500; use it like this and don't use it
13 like that?

14 A Oh, no, that material isn't in a manual
15 form. That material is on the box. It says that
16 it is a nuisance dust mask. For instance, you look
17 at an 8500 box, and it will say don't use it for
18 spray painting - on the side of the box, stuff like
19 that.

20 Q How about the 8710, the same answer?

21 A That is on the packaging materials that
22 it comes in, yes. Also, it is on the back of the
23 sale sheets, too, in the case of the 8710. You turn
24 them over on the back side - it would be more or

1 one probably didn't have a back side, but in general
2 today they are two-sided. You pull it over, and
3 it will say what it is useful for. You will see
4 the NIOSH approval label there, that sort of thing.

5 Q Does your particular Division have any
6 long-time employees, people that have been there
7 25 or 30 years?

8 A No.

9 Q What is your actual involvement in writing
10 instructional aids to these people?

11 A My actual involvement in that is as the
12 approver of them when the writer - which can be solely
13 a Technical Service person that is working in my
14 group or himself working with a Marketing person -
15 has written instructional materials, which would
16 include pictures, if that's apropos. And they would
17 be done in a typewritten rough draft with line drawings
18 and photographs. And that would then come to me
19 for approval, as to whether I agree with it, the
20 way it is laid out. I would be agreeing with it
21 in a technical sense as to whether the claims made
22 there are real and true, if we are making claims
23 about technical performance; or I personally maybe
24 would rather see some more thought put into the sequence

1 like that. Maybe I just have a difference of opinion,
2 and we talk about it. But my involvement would be
3 that way. It has to be signed by me before it can
4 go any further.

5 Q I was about to ask you if you were the
6 final authority.

7 A One of them.

8 Q Does it go to someone else?

9 A It goes lastly to our legal counsel. They
10 have to approve it - read it and approve it, too.

11 Q Does that apply to what is printed on the
12 box?

13 A Yes, it does apply to what is printed on
14 the box.

15 Q What other things have you acted on in
16 this position?

17 A Primarily what they are is the printed
18 materials that are given to our sales rep, the promotional
19 literature, sale sheets, the instructional materials
20 and box labeling, if in fact that is different from
21 instructional materials.

22 Q Do you maintain some kind of a file or
23 record of all this stuff that you act on?

24 A Yes. We can find in a file the materials

1 Q If I asked you would you please go back
2 to your office and find me the files maintained in
3 your office that relate to the preparation of these
4 types of written documents, boxes, whatever, could
5 you pretty well find me an historical file that would
6 have in it all of the work that has been done that
7 they have retained a record of, relating to the sale
8 sheets, boxes and so forth?

9 A The physical existence of them? How do
10 you mean, work records?

11 Q Well, copies of them, copies of the end
12 product of your efforts.

13 A Okay.

14 Q Or the working papers in connection with
15 it, whatever you would retain.

16 A Let's see. No, I can't, for the simple
17 reason that the finals of this end up in what is
18 known as a key line. It is a thing that is used
19 by printers then to be able to print it for you.
20 Those key lines are kept - not by us - we don't keep
21 them.

22 The key line is the last stage before printing.
23 That gets reviewed, just the same as the first work
24 product does. The same people do it. I have to

1 The stuff that was handwritten or typed,
2 **whatever is** used as the working document, always
3 as changes are made - as we want to change them from
4 the first one - we use the previous one to compare
5 with the new one to see that it in fact happened.
6 And we do that all the way down the line until we
7 get to the key line. Every time this happens, we
8 go through the hoop again, between myself and legal
9 counsel doing these things.

10 In the end when we have a key line that
11 matches the last working proof document, that is
12 signed off and used.

13 The other stuff is then just like you were
14 making notes and it was going to be transcribed.
15 The notes get thrown away. We don't keep the notes,
16 because what we have in the end is the end document,
17 and that can be reproduced, the key lines.

18 Q The key lines is what I am really interested
19 in. Can you get that for me?

20 A I can't personally because I don't have
21 them. In fact, I am not sure who keeps them. I
22 know they exist.

23 Q Can you find out and let Mr. Whittenburg
24 know?

1 my understanding that it has been
2 provided. If not, we will look and
3 see if we can find that.

4 (By Mr. Swearingen)

5 Q Are you personally a member of any trade
6 association, professional organization in your line
7 of work?

8 A No, sir, I am not. There are others who
9 are, but not myself. I don't go to the ISEA, for
10 instance.

11 Q Do you go to any ---

12 A (Interrupting) Oh, sure, I go to them.
13 In fact, every year I go -- It's a good learning
14 source - the American Industrial Hygiene Conference
15 every year and listening to all the papers. I actually
16 spend very little time on the showroom floor. I
17 listen to the papers that are being given.

18 Q Is that through your company's membership
19 or is that a personal membership?

20 A It's through the company's membership.

21 Q Are you active in any other professional
22 association through your company's membership, other
23 than that one?

24 A No, sir, that's the only one.

1 or weekly basis that are generated by professional
2 trade associations or publishers that relate to industrial
3 hygiene and particularly respirators?

4 A With reference to respirators, there's
5 one I read all the time because it is mailed to me
6 in my name. It is the BNA - it's "The Reporter",
7 and that covers everything that is going on with
8 the Government - especially with OSHA - which basically
9 tells you what is happening in the respirator industry.

10 To my knowledge, there are no publications
11 that you can buy that tell you what anybody is doing
12 in the design of respirators. Those are given in
13 paper form usually that you pick up at the American
14 Industrial Hygiene Conference or the newly formed
15 International Society for Respirator Protection which
16 has had one global meeting so far last year - again,
17 papers being given.

18 Q Have any papers been given by yourself
19 at any of these conferences?

20 A Not at the AIHC. I gave a paper once on
21 diffusional monitors describing how they work when
22 I was doing this Business Development Unit leadership
23 at a specific conference that ---

24 Q (Interrupting) That's not about respirators.

25 A No, that's not about respirators.

1 Q About respirators have you given any papers?

2 A No.

3 Q Have any papers been given by the guys
4 in your Department at 3M that you know of?

5 A Not on respirators, no.

6 Q Have any papers been given by anybody out
7 of the Research & Development Department that you
8 know of about respirators?

9 A Not about respirators directly, no.

10 MR. WHITTENBURG: That you know of?

11 THE WITNESS: That I know of,
12 anyway. It's possible that they could
13 have, and I am just not aware of it.

14 (By Mr. Swearingen)

15 Q How long have you been familiar with litigation
16 involving alleged defects in your company's 8710
17 and 8500?

18 A About a year ago, I'd say; maybe a little
19 more.

20 Q Have you seen any products liability assessment
21 done by or through your company or anybody else about
22 the 8710 or the 8500?

23 MR. WHITTENBURG: Don't answer
24 that.

1 MR. WHITTENBURG: I don't know
2 what you're talking about, but if
3 you're talking about anything ---

4 MR. SWEARINGEN: (Interrupting)
5 How could you tell him not to answer
6 if you don't know what I'm talking
7 about?

8 MR. WHITTENBURG: I'm just about
9 to tell you. If it might deal with
10 anything developed with respect to
11 the litigation, it would be privileged,
12 and we are not going to waive that
13 privilege.

14 (By Mr. Swearingen)

15 Q Have you seen any studies done concerning
16 cost factors of making certain changes in your product;
17 such as placing warnings on your product?

18 A No, I have never seen anything like that
19 that addresses cost factors of placing warnings on
20 a product.

21 Q Have you seen anything that assessed cost
22 factors that may relate to the product that have
23 come in response to litigation generally; not a particular
24 case, but just generally in response to litigation?

1 (By Mr. Swearingen)

2 Q Are you familiar with the fact that MSA
3 has an approved single-use disposable respirator
4 that they have never marketed?

5 A No, I was not aware of that.

6 Q Do you spend any time going to Washington
7 to have interaction with the Government agencies
8 that regulate your business?

9 A Occasionally I have, yes.

10 Q Where do you go normally in Washington
11 when you go?

12 A OSHA.

13 Q What do you do there?

14 A The one time I was there was to give the
15 Division statement on the use of half mask respirators
16 in terms of the cotton dust standard - one of them.
17 There were several times that I went. I did it once.

18 Q So, you've only been there one time?

19 A No, I didn't say that. In terms of doing
20 something like that. I used to go there several
21 times. Again, it was with the gas monitoring devices.
22 The people that control that in OSHA also happen
23 to live in Washington, D.C., in the Department of
24 Labor Building.

1 it a trip in opposition to certain OSHA recommendations
2 or suggestions?

3 A Yes. We were not agreeing with certain
4 limitations placed on the respirator.

5 Q So you went there to oppose that on behalf
6 of your company?

7 A That's correct.

8 Q You have personal knowledge of people in
9 your company other than yourself that frequently
10 go to Washington to OSHA to oppose Government changes
11 or regulations that they feel like are detrimental
12 to your company's business, don't you?

13 A I'm fairly certain that the fellow that
14 we talked about before - Don Wilmes - has done that.

15 Q Frequently?

16 A I don't know how many times he's gone.

17 Q Is he the one that usually goes to oppose
18 Government regulations that you feel like will hurt
19 business?

20 MR. WHITTENBURG: Is that why
21 he is going?

22 THE WITNESS: No, that's not
23 why he is going. If he is going to
24 oppose Government regulations, it's

anything to do with business.

2 (By Mr. Swearingen)

3 Q Is he usually the one that goes to oppose
4 things on a technical basis?

5 A I think so, but that's just a guess.

6 Q Where is his office located?

7 A In St. Paul, the same as me.

8 Q The same Division you are in?

9 A Yes.

10 Q This is some document that was produced
11 by your company's lawyer. I don't know what it is.
12 Do you know what it is?

13 A Are you talking about the whole thing or
14 just this top sheet?

15 Q The first sheet. What is that?

16 A Product approval status -- You asked what
17 that is. It is a listing of the various products
18 of our Division that are in 1982 - that are in either
19 stages of raw development or some change taking place
20 that requires approval by NIOSH. On the right-hand
21 side it says the status of what happened.

22 Q There's a number right there under your
23 right thumb, 11651. There's a number on I guess
24 about every document we have. Do you know what that

1 A No, sir.

2 MR. WHITTENBURG: It's a number
3 that we put on there.

4 MR. SWEARINGEN: Who is "we",
5 your law firm?

6 MR. WHITTENBURG: No, not the
7 law firm. It was just to number them
8 seriatim.

9 MR. SWEARINGEN: That was not
10 done when these documents were prepared?

11 MR. WHITTENBURG: No.

12 MR. SWEARINGEN: It was done
13 when they were prepared to give to
14 me?

15 MR. WHITTENBURG: Yes.

16 MR. SWEARINGEN: I guess just
17 to give us in response to our Motion
18 to Produce in this case?

19 MR. WHITTENBURG: That's exactly
20 right.

21 MR. SWEARINGEN: Do you have
22 some kind of index or something that
23 ties into all of these numbers?

24 MR. WHITTENBURG: I wish I did.

1 (By Mr. Swearingen)

2 Does your group at 3M have a technical
3 library?

4 A Not specifically, no. There are libraries
5 available to us around the complex, the 3M Center.

6 MR. SWEARINGEN: That's all I have.

7
8 EXAMINATION BY MR. VAN GILDER:

9 Q Sir, at the very beginning of your deposition
10 you mentioned one of the sources of your information
11 for reading about respirators was a course given
12 by John Pritchard. Is he quite knowledgeable in
13 the area of respirators and respirator protection?

14 A Based upon what I know today, I would say -
15 and in trying to remember how he was then - I would
16 say fairly so, yes.

17 Specifically, if you get into self-contained
18 breathing apparatuses, he's pretty good at that.

19 MR. VAN GILDER: That's all I
20 have. Thank you.

21 MR. BRYANT: Where are the documents
22 that are to be produced today?

23 MR. SWEARINGEN: What was supposed
24 to be produced today?

25 MR. WHITTENBURG: Nothing. I

1 was going to go ahead and produce
2 the documents that Diane had asked
3 for.

4 MR. SWEARINGEN: Is that the
5 ones you mentioned to me outside?

6 MR. WHITTENBURG: Yes.

7 MR. SWEARINGEN: But you don't
8 have them yet?

9 MR. WHITTENBURG: Not unless
10 they have gotten here.

11 MR. SWEARINGEN: Whatever they
12 are, you will let us know?

13 MR. WHITTENBURG: Yes. It's
14 what you all put on the first notice
15 that was sent out that has since been
16 superseded, yeah.

17 MR. BRYANT: Do you have possession
18 of the documents?

19 MR. WHITTENBURG: Yes.

20 MR. BRYANT: In order to prevent
21 my sending you a written request,
22 I would ask that you make me a copy.

23 MR. WHITTENBURG: Sure.

24 MR. VAN GILDER: I would like

copies also please

1 THE STATE OF MINNESOTA:

2 COUNTY OF _____:

3
4 I, KENNETH L. SCHEEL, hereby certify that
5 I have read the foregoing transcript of my testimony
6 given in the foregoing numbered and styled case,
7 and that same is true and correct to the best of
8 my knowledge and belief.

9 I further certify that any and all corrections
10 have been made on a separate page and initialed by me.

11 This _____ day of _____, 1984.

12
13
14 _____
KENNETH L. SCHEEL

15
16
17 SWORN TO AND SUBSCRIBED BEFORE ME this

18 _____ day of _____, 1984.

19
20
21
22 _____
23 NOTARY PUBLIC
24

1 THE STATE OF TEXAS:

2 COUNTY OF JEFFERSON:

3
4 I, CHARLOTTE SMITH, a Certified Shorthand
5 Reporter, hereby certify that the foregoing testimony
6 was given before me after the Witness had been first
7 duly sworn.

8 I further certify that this deposition
9 was typed under my direction and is a complete and
10 correct transcript of the proceedings; and that it
11 is being filed with the Court in accordance with
12 the Stipulation of Counsel contained in this deposition.

13 I further certify that I am neither attorney
14 for, related to nor employed by any of the parties
15 to the lawsuit in which this deposition was taken.
16 Further, I am neither related to nor employed by
17 any attorney of record in this cause; nor do I have
18 a financial interest in the matter.

19 GIVEN UNDER MY HAND AND SEAL OF OFFICE
20 this ____ day of _____, 1984.

21
22
23
24

CHARLOTTE SMITH, CSR, RPR

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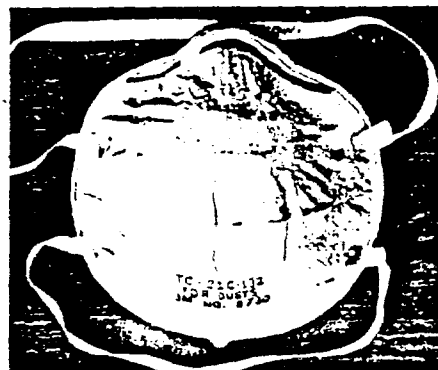
3M[®]
BRAND
Respirator
NO. 8710

**APPROVED FOR PROTECTION
AGAINST PNEUMOCONIOSIS
AND FIBROSIS
PRODUCING DUSTS***

LIGHT WEIGHT, DISPOSABLE,
Mask is inexpensive, yet durable
enough for reuse. Low cost allows
worker to discard after single
wearing.

DOESN'T GET IN THE WAY —
Nosepiece rests low enough not to
interfere with glasses, safety goggles.

ONE PIECE CONSTRUCTION - Elastic headbands are permanently attached, supply proper tension. No hooks, clamps or clips to adjust.



PACKING		SUGGESTED NET PRICE PER CASE TO CONSUMERS			
RESPIRATORS PER BOX	RESPIRATORS PER CASE (10 BOXES)	1-4 CASES	5-9 CASES	10-24 CASES	25 CASES OR MORE
15	150	\$82.50	\$74.25	\$68.50	\$62.00

8710 may be combined with full cases of No. 8500 and 8705 masks to