

FILE NAME: CertainTeed (CERT)

DATE: 1982 Feb 2

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DOCUMENT DESCRIPTION: Legal - Horowitz Deposition Part 2 with Attachment

1	DONALD WEISBERG, ESQUIRE	:	COURT OF COMMON PLEAS
2	and MEYER A. BUSHMAN,		OF PHILADELPHIA COUNTY
3	ESQUIRE, CO-EXECUTORS		
	OF THE ESTATE OF		
3	MELVIN P. TIMBERS		
4	VS.	:	MAY TERM, 1978
5	BELL ASBESTOS MINES, LTD.	:	NO. 4629
6	ELSIE HAYDEN, ADMINISTRA-	:	COURT OF COMMON PLEAS
7	TRIX OF THE ESTATE OF		OF PHILADELPHIA COUNTY
7	JESSE HAYDEN, DECEASED		
8	VS.	:	NOVEMBER TERM, 1978
9	BELL ASBESTOS MINES, LTD.,		
	ET AL	:	NO. 3624
10	PETER SERRATORE and	:	COURT OF COMMON PLEAS
11	MARJORIE SERRATORE, his		OF PHILADELPHIA COUNTY
	wife		
12	VS.	:	JULY TERM, 1979
13	BELL ASBESTOS MINES, LTD.,		
14	ET AL	:	NO. 3348
15	ROSEMARY E. COULSTON,	:	COURT OF COMMON PLEAS
16	ADMINISTRATRIX OF THE		OF MONTGOMERY COUNTY
17	ESTATE OF CHARLES W.		
	COULSTON, AND ROSEMARY		
17	E. COULSTON, on her own		
	behalf, ET AL		
18	VS.		
19	BELL ASBESTOS MINES, LTD.,		
20	ET AL	:	NO. 80-5250
21	PAULINE GASKINS, ADMINI-	:	COURT OF COMMON PLEAS
22	STRATRIX OF THE ESTATE OF		OF MONTGOMERY COUNTY
	ALFRED GASKINS, ET AL		
23	VS.		
24	BELL ASBESTOS MINES, LTD.,		
	ET AL	:	NO. 80-12774
25			

1		2
2	JOHNNIE WILLIAMS and	: COURT OF COMMON PLEAS
3	RUTH F. WILLIAMS, his	OF PHILADELPHIA COUNTY
4	wife	
5	VS.	: AUGUST TERM, 1980
6	BELL ASBESTOS MINES, LTD.,	
7	ET AL	: NO. 3710
8	ROSE MARY MACO, EXECUTRIX	: COURT OF COMMON PLEAS
9	of the Estate of PAUL	OF MONTGOMERY COUNTY
10	MACO, SR., and ROSE MARY	
11	MACO, on her own behalf	
12	VS.	
13	BELL ASBESTOS MINES, LTD.,	
14	ET AL	: NO. 80-18537
15	EDWARD BARNES and NANNIE	: COURT OF COMMON PLEAS
16	BARNES, his wife	OF PHILADELPHIA COUNTY
17	VS.	: DECEMBER TERM, 1980
18	BELL ASBESTOS MINES, LTD.,	
19	ET AL	: NO. 4429
20	WARDELL M. BAILEY and	: COURT OF COMMON PLEAS
21	ROSE ELLA BAILEY, his	OF PHILADELPHIA COUNTY
22	wife	
23	VS.	: MAY TERM, 1981
24	BELL ASBESTOS MINES, LTD.,	
25	ET AL	: NO. 1675
	WILLIAM R. DIXON and	: COURT OF COMMON PLEAS
	MATTIE N. DIXON, his	OF PHILADELPHIA COUNTY
	wife	
	VS.	: OCTOBER TERM, 1981
	BELL ASBESTOS MINES, LTD.,	
	ET AL	: NO. 2874
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Continued Videotape Deposition of

LEON HOROWITZ, taken pursuant to notice at the offices
of KNIPES-COHEN ASSOCIATES, 400 Market Street, 10th
Floor, Philadelphia, Pennsylvania, on Tuesday,
February 2, 1982, at 9:30 a.m., E.S.T., before
Claude Forte, Notary Public and Videotape Operator
and Suzanne McLaughlin White, Registered Professional
Reporter, Notary Public, in and for the County of
Philadelphia, there being present:

- - -

APPEARANCES:

BLANK, ROME, COMISKY & McCAULEY,
ESQUIRES

BY: MITCHELL COHEN, ESQUIRE
Representing Plaintiffs

SHEIN & BROOKMAN, ESQUIRES

BY: ROBERT PAUL, ESQUIRE
Representing Plaintiffs

POST & SCHELL, ESQUIRES

BY: F. JAMES GALLO, ESQUIRE
Representing Bell Asbestos Mines, Ltd.

MALCOLM & RILEY, ESQUIRES

BY: PETER COLEMAN, ESQUIRE
Representing Celotex

MARSHALL, DENNEHEY, WARNER, COLEMAN
& GOGGIN, ESQUIRES

BY: MICHAEL CREEDON, ESQUIRE
Representing Johns-Manville Corporation

(Continued)

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2 CONTINUED APPEARANCES:

3

MESIROV, GELMAN, JAFFE, CRAMER &
JAMIESON, ESQUIRES

4

BY: RANDI WERNER, ESQUIRE
Representing GAF

5

6

OMINSKY, JOSEPH & WELSH, ESQUIRES
BY: CLIVE MENDELOW, ESQUIRE
Representing Asbestos Corporation
Limited

7

8

PEPPER, HAMILTON & SCHEETZ, ESQUIRES
BY: DIANA JONIEC, ESQUIRE
Representing Amatex

9

10

SWARTZ, CAMPBELL & DETWEILER,
ESQUIRES

11

BY: DANIEL BRUCH, JR., ESQUIRE
Representing Certainteed

12

13

BENNETT, BRICKLIN & SALTZBURG,
ESQUIRES

14

BY: MARY ANN CONNERS, ESQUIRE
Representing Nicolet

15

LaBRUM & DOAK, ESQUIRES
BY: WILLIAM TAYLOR, JR., ESQUIRE
Representing Keene Corporation

16

17

HARVEY, PENNINGTON, HERTING &
RENNEISEN, ESQUIRES

18

BY: JOEL GUSKY, ESQUIRE
Representing Carey-Canadian Mines,
Ltd.

19

20

DECHERT, PRICE & RHOADS, ESQUIRES
BY: JOHN MASON, ESQUIRE

21

Representing Turner-Newall

22

PEPPER, HAMILTON & SCHEETZ, ESQUIRES

23

BY: PATRICIA CARPENTER, ESQUIRE
Representing Lake Asbestos of
Quebec

24

25

(Continued)

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CONTINUED APPEARANCES:

3

McWILLIAMS & SWEENEY, ESQUIRES
BY: WALTER JENKINS, ESQUIRE
Representing Special Asbestos Co.

4

5

SHEA & GARNER, ESQUIRES
BY: S. ELIZABETH GIBSON, ESQUIRE
Representing Brinco Mining Ltd.

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DIRECT CROSS REDIRECT RECROSS

LEON HOROWITZ

By: Mitchell Cohen

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By: Robert Paul

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→ **Wiederholung**

By: S. Elizabeth Gibson

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By: John Mason

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• **no** **every**

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By: F. James Gallo

— **1998**

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every agent

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2 OFF THE RECORD DISCUSSIONS AND BREAKS PAGE NUMBER

3 Discussions - 9:54 am - 9:55 am 11

4 Break -11:02 am - 11:15 am 74

5 Break - 1:10 pm - 1:24 pm 171

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2 MR. PAUL: Robert Paul for
3 Plaintiffs, Weisberg and Bushman. I have
4 two very quick statements I want to make.

5 First of all, on behalf of Plaintiffs
6 Weisberg and Bushman, our agreement that we
7 made yesterday, late afternoon, the point at
8 which Mr. Cohen's cross examination of this
9 witness is completed, that our case would be
10 finished, that we would waive the examination
11 by Mr. Locks for use in our case, and in our
12 case only.

13 On behalf of Mr. Locks and Mr.
14 Greitzer, they -- I spoke to Mr. Greitzer
15 yesterday afternoon at the close of yesterday's
16 session, and they indicated that they did not
17 wish to waive their cross examination of this
18 witness, and that they would not -- they were
19 not able to appear today, because they believed
20 yesterday would be the one day, and they reserve
21 their right to cross, and Mr. Gallo and Mr.
22 Horowitz, and either Mr. Greitzer or Mr. Locks
23 will have to work out another day for the
24 cross examination of this witness by either
25 Mr. Greitzer or Mr. Locks, for their case.

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2 In the absence of that, until that
3 occurs, their contention is that the deposition
4 is not open -- is not completed, rather, as
5 to them, and they would object on that ground,
6 to its use in their case. Is that-- do you
7 understand that, Mr. Gallo, what I've said on
8 their behalf?

9 MR. GALLO: I understand what you
10 said, Mr. Paul. I will just note for the
11 record that the deposition is noticed to
12 continue from day to day until completed, and
13 they did receive notice of that deposition,
14 in that language.

15 That's all.

16 MR. FORTE: We're now back on the
17 record. This is the beginning of videotape
18 number six. Today's date is February 2nd, 1982.
19 The time is 9:52.

20 BY MR. COHEN:

21 Q. Mr. Horowitz, Mitchell Cohen, again, on behalf
22 of certain Plaintiffs in this Action.

23 Since other Counsel has completed his
24 questioning, I would like to pick up where we left off
25 during the earlier part -- portion of this videotape.

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2 Let me ask, first, it was apparent that you brought with
3 you yesterday, a number of documents and records, some of
4 which have been offered as exhibits in this deposition.
5 And, I do understand that subsequent to your being
6 deposed in June of 1980, that you were asked to review
7 your personal records that you brought with you from
8 Keasbey and Mattison or Certainteed, to determine
9 whether you had any other documents and records relat-
10 ing to or that were generated while you were employed
11 by both of those companies; is that correct?

12 A. That is correct.

13 Q. Okay.

14 And, subsequent to that deposition,
15 did you have occasion to review your personal notes
16 to determine whether there were any other documents
17 and records generated by you or kept by you, while
18 you were employed, which were not produced at the
19 June 30th, 1980 deposition?

20 A. That is true.

21 Q. Okay.

22 And, am I correct that you found cer-
23 tain documents and records following that deposition?

24 A. I found a few documents.

25 Q. Okay.

Leon Horowitz - Cross

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Now, --

MR. PAUL: Before we go forward, can we stop the videotape for just a moment?

MR. FORTE: Yes, we're now going off the record at 9:54.

(Whereupon discussions were held off the record from 9:54 am to 9:55 am)

MR. GUSKY: Were you given any explanation as to -- by Mr. Locks, as to why he cannot be here today?

MR. GALLO: No, I wasn't.

MR. GUSKY: Okay, thank you.

MR. GALLO: But, Mr. Locks did agree that anything that is said here today can be used in his cases, subject to his right to cross examine at length at some later date.

MS. GIBSON: Well, if we finish up before the end of the day and Mr. Locks isn't here to cross examine, it's Brinco's position that this deposition is complete.

MR. GALLO: Well, it can't -- that's not the understanding -- it can't be by virtue of stipulations we made yesterday.

MR. PAUL: Which you are present to make.

Leon Horowitz - Cross

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MR. COHEN: Okay.

MR. FORTE: We're back on the record,
the time is 9:57.

BY MR. COHEN:

Q. Mr. Horowitz, prior to the very short break we just took, I was asking you, and I believe you stated that subsequent to the June 30th, deposition, you did discover some documents and records; is that correct?

A. That is correct.

Q. And, I would like you to look, if you would, at Exhibit #28, which is a letter, I believe you identified as signing, which was addressed to Ms. Gibson, who is an attorney at the law firm of Shea and Garner in Washington; is that correct?

A. That is correct.

Q. And it purports to have included in that -- with that cover letter some materials relating to the June 30th deposition. And, did you, in fact, include certain documents and records along with this cover letter to Ms. Gibson?

A. Yes, I did.

Q. Do you have with you any of the documents and records that you submitted to Ms. Gibson with this

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2 cover letter?

3 A. No, I do not.

4 MR. COHEN: Let me ask at this
5 time, since Ms. Gibson is present whether
6 Brinco does have the documents and records
7 that were sent to it by Mr. Horowitz?

8 MR. GALLO: Objection, that's
9 not part of the --

10 MR. COHEN: Okay, well, if --

11 MR. GALLO: -- trial of cross
12 examination to ask another attorney something.

13 MR. COHEN: -- I understand that.
14 Well, if the documents are not to be produced
15 then I am going to reserve the right to call
16 Mr. Horowitz back, because there were certain
17 documents that were not produced and made
18 available to me as Counsel for Plaintiffs,
19 which were discovered by Mr. Horowitz. And,
20 accordingly, I will not agree that this
21 deposition will conclude at any time until
22 I've had the opportunity to examine those
23 documents and records to determine whether
24 there was any relevance to the questions that
25 I intend to ask with regard to the Plaintiffs

that I represent.

MR. GALLO: All right, let me make a statement as to that. We can go off the tape for this.

MR. FORTE: We're now going off the record at 9:59.

MR. PAUL: Before we -- I also wish to join in Mr. Cohen's objection on behalf of our Plaintiff.

MR. GALLO: Right. This videotape deposition for use at trial was noticed January 11, 1981. It was sent to both Shein and Brookman and Blank, Rome, Comisky and McCauley, and it was noticed for yesterday, February 1st. It's now February 2nd. And at no time did any of the Counsel for Plaintiffs notice a discovery proceeding of this witness. This deposition was noticed as a deposition, it would be presented in the trials in each of these cases, and it is not appropriate for counsel now to take discovery of the witness or to attempt to preclude use of this deposition at trial, because of their own failure to take discovery. They were furnished with copies of

1 the deposition and sworn testimony given by
2 this witness on other occasions, which is
3 the only testimony he has given in the asbestos
4 litigations. And the documents introduced at
5 that time -- there was never any inquiry by
6 Blank, Rome to me, regarding any other documents
7 or any other matters that the witness had in
8 his possession. And, in fact, although we were
9 here yesterday, Mr. Cohen didn't request produc-
10 tion of documents at that time so that he
11 could review them at his leisure last night.

12 Further, I would object to your -- well,
13 your statement says what it says and I've
14 stated my position.

15 MR. COHEN: All right, let me just
16 state in discussing the matter, it was repre-
17 sented to me that the documents that were in
18 existence were those that were attached as
19 exhibits to the June 30th, 1980 deposition.
20 Now, I discover yesterday for the first time that
21 there are additional documents and records,
22 some of which were -- or are in the possession
23 of other Defense counsel. To the extent that
24 the witness is in possession or other Defendants
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2 are in possession of documents and records
3 peculiar to them and which are in their sole
4 custody and control, I'm going to ask for an
5 instruction by the Court to the Jury with
6 regard to the documents and records, to the
7 effect that they would be adverse to the
8 parties that are in possession of those records,
9 since they have not been produced and are
10 available.

11 MR. GALLO: Well, thank you.

12 MR. COHEN: Excuse me, you don't have
13 to thank me.

14 MR. GALLO: I was going to thank you
15 for giving us a preview of your trial strategy.

16 MR. COHEN: Well, it doesn't take a
17 genius to figure that out, if that came as a
18 strategy thing, so be it.

19 I, again, am going to renew my
20 objections and I will move at the appropriate
21 time to preclude this deposition for being
22 introduced. I'm going to ask again, since
23 Counsel is here in the interest of saving time,
24 on behalf of the Court, whether I can look at
25 any documents and records that were turned over

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2 by Mr. Horowitz, since it goes to his
3 credibility as well as the substantive
4 issues of the litigation. If I'm going to
5 be refused at this time the documents and
6 records are present, then, all we're doing
7 is going to waste the Court's time that some-
8 thing that could be provided to me now and
9 negate the entire objection I'm making. So,
10 I'm going to ask again if Counsel will provide
11 me with the documents and records.

12 MR. GALLO: Why don't you just ask
13 the witness if he has them with him.

14 MR. COHEN: I already did.

15 MR. MASON: Why doesn't somebody
16 give them to him?

17 MR. COHEN: If you want to play
18 games, we can --

19 MR. MASON: Save time, give him the
20 box.

21 MR. GUSKY: Let me make a statement
22 for the record.

23 MR. GALLO: How long is it going to
24 take?

25 MR. COHEN: I don't know what I'm

1
2 looking at. I could be looking at nothing,
3 or I could be looking at things --

4 MR. GALLO: Why didn't you look at
5 them yesterday.

6 MR. COHEN: Well, why didn't you tell
7 me yesterday that there were other documents.

8 MS. GIBSON: The deposition makes
9 that clear.

10 MR. COHEN: Well, I wasn't advised
11 that they were produced any way. It was
12 represented to me that the only thing that was
13 going to be done was a repetition of the
14 June 30th deposition.

15 MR. GALLO: That was all that was
16 done, on direct.

17 MR. COHEN: Well, that's not true,
18 because we have at least one other document
19 --

20 MR. GALLO: I said on the direct.
21 Do you have something to say, Joel?

22 MR. GUSKY: Since I apparently was
23 the person that opened the pandora's box on
24 this issue, I have in my possession what is marked
25 as Exhibit 28, Exhibit 29. I found in my file,

1 which I keep of certain witnesses who are deposed,
2 memorandum from Ms. Gibson, dated July 14, 1980
3 in connection with documents which Mr. Horowitz
4 provided her, purportedly in response to, or as
5 a supplement to Exhibit 28. I will give to
6 Mr. Cohen the packet of documents which I
7 received. I make no representation that this is
8 the entire scope of the documents, because the
9 date is almost a year and a half from today's
10 date, my recollection doesn't go back that far
11 with respect to that issue.
12

13 MR. COHEN: Let me just -- can I ask
14 you, Joel, to hold on to them now. I appreciate
15 your courtesy in making them available.

16 Okay, we can go back on then.

17 MR. FORTE: We're back on the record.

18 The time is 10:05.

19 BY MR. COHEN:

20 Q. Okay, with regard to your appearance here
21 yesterday, did you have occasion to discuss the fact
22 that you were going to be deposed -- or had been
23 called for deposition with anyone, prior to appearing
24 yesterday?

25 A. I was called by Mr. Gallo, and asked to -- asked

1 if I would depose again in this case.

2 Q. And, can you tell me what arrangements were
3 made between you and Mr. Gallo with regard to
4 compensation of you as a fact witness in this
5 deposition?
6

7 A. My cost of travel, the hotel bill and meals,
8 and I asked for compensation equal to the loss of time
9 I would have on my job.

10 Q. Now, can you tell me what fee you asked for
11 in terms of compensation for being a fact witness
12 in this litigation, what was the agreed upon
13 arrangement?

14 MR. GALLO: Objection.

15 THE WITNESS: There was no dollar
16 agreement.

17 BY MR. COHEN:

18 Q. Well, in your mind, how much do you believe you
19 are entitled to as compensation for your appearance
20 yesterday, today --

21 MR. GALLO: Objection to the form.

22 THE WITNESS: I have to answer
23 that?

24 MR. GALLO: Yes.

25 THE WITNESS: I agreed, in my mind, as

well as in my discussion with Mr. Gallo that I would ask for the same fee I asked for when I deposed in Washington.

BY MR. COHEN:

Q. Okay, and can you tell me, specifically, what that fee is?

A. Except for the cost, it was three hundred dollars a day.

MR. GALLO: Note my objection to that whole line of questioning.

BY MR. COHEN:

Q. Now, am I correct that you are on your own time with regard to the time you're spending being deposed, in other words, you are taking vacation time from your employment?

A. You are correct.

Q. All right.

And, are you normally compensated for days that you take as vacation days by your employer?

A. I'm entitled to a certain number of vacation days.

Q. Okay.

But, you are compensated for those days

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2 of vacation that you take from your employment; is
3 that correct?

4 A. I am. But, I would like to make a statement
5 about that, if I may? I am also a consultant in
6 industrial hygiene, and many of the days that I take
7 for vacation, I use as a consultant, and that is the
8 fee, minimum fee, that I get for consultation.

9 Q. Now, can you tell us with whom you have any
10 consulting arrangements to testify with?

11 A. I have no consulting arrangements to testify
12 with anybody.

13 Q. Okay.

14 Well, can you tell us what asbestos
15 companies have retained you in the past as a consulting
16 witness on their behalf?

17 A. Nobody.

18 Q. Now, when you con -- when you are a consultant,
19 can you tell me, has it been your understanding that
20 as a consultant, you testify as to matters of expertise
21 and therefore, you are a consulting expert for the
22 company that may engage you?

23 A. I don't testify as a consultant in general.

24 Q. Well, in what capacity --

25 A. I don't testify.

1
2 Q. Okay.

3 A. I do engineering work for them, or industrial
4 hygiene work.

5 Q. Okay.

6 A. When I consult.

7 Q. But, you are -- you are, therefore, not in a
8 consulting arrangement with any corporation with regard
9 to your testimony here?

10 A. No.

11 Q. Okay.

12 Now, are you going to be paid by your employer
13 for the vacation days that you are taking both yester-
14 day and today in addition to the six hundred
15 dollars remuneration which you will seek from
16 Counsel?

17 A. I hope so.

18 Q. Okay.

19 And, is your employer aware that you
20 are here today testifying, or that you were here
21 yesterday testifying at a fee of three hundred dollars
22 per day?

23 MR. GALLO: Objection.

24 THE WITNESS: They are not aware that
25 I am here today or yesterday, but they -- may I

add to that statement?

MR. COHEN: Certainly.

THE WITNESS: They were aware that I was testifying in Washington. In fact, Ms. Gibson was there when our attorney sat in and her company -- her office questioned me as to whether I might become -- be able to be a witness in Washington.

BY MR. COHEN:

Q. Okay, so your answer is --

A. So, they were aware before, but I did not make them aware again. And, if I had known that you would have brought American Mutual in as you did in yesterday's questioning, I would have spoken to my attorney.

Q. Okay.

And, you were also advised, were you not, yesterday, prior to the deposition beginning, that American Mutual was named as a Defendant in asbestos litigation --

MR. GALLO: Objection.

BY MR. COHEN:

Q. -- were you not, and you were given the opportunity to have yourself deposed or not, or seek counsel,

1 prior to the deposition beginning; is that correct?

2 A. No, the question is confusing, but if you mean,
3 was I advised prior to this deposition?

4 Q. Immediately before the deposition began
5 yesterday.

6 A. That -- that American Mutual was -- I don't
7 recall that.

8 MR. GALLO: I'll object, and move to
9 strike the question, totally irrelevant.

10 BY MR. COHEN:

11 Q. Is there any reason why you did not notify your
12 employer of this particular deposition?

13 A. None of their damned business, unless I knew
14 that you were going to bring in American Mutual.
15 Then, it was their business.

16 Q. Prior to yesterday, were you aware that
17 American Mutual was a Defendant in asbestos
18 litigation?

19 A. In some, yes.

20 MR. GALLO: Note my objection

21 --

22 BY MR. COHEN:

23 Q. Do you --

24 MR. GALLO: -- to this whole line of

questioning concerning American Mutual.

May I have a continuing objection
so we can speed it up?

MR. COHEN: You certainly may.

You certainly may.

BY MR. COHEN:

Q. Do you believe it is your employer's business
to know whether one of its employees is testifying in
a matter where it may directly effect their interest?

MR. GUSKY: Objection.

THE WITNESS: I obviously do --

MR. GUSKY: -- the question is
argumentative, Mr. Cohen.

THE WITNESS: I obviously do, that's
why I called the Legal Representative, when I
was first asked to depose in a similar case.

BY MR. COHEN:

Q. You're talking about the 1980 deposition?

A. That's right.

Q. I'm talking about this series of depositions
in 1982.

A. Since at that time, our Legal representative
said -- when my company represented Keasbey and Mattison,
and Keasbey and Mattison does not exist, they had no

objection to my deposing. And, therefore, since this was sort of a continuance of that, I didn't think it was necessary to ask them again.

Q. Now, I assume that you spoke with Mr. Gallo prior to being deposed yesterday; is that correct?

A. By telephone, yes.

Q. Okay.

And, besides speaking with Mr. Gallo, can you tell me whom else you spoke with regarding the testimony that you would give in the deposition today?

A. Mr. Dan Bruch.

Q. Mr. Bruch represents Certainteed Corporation?

A. So he tells me.

Q. And, can you tell me when you spoke with Mr. Bruch, was Mr. Bruch in the company of Mr. Gallo?

A. I spoke with Mr. Bruch mostly without the company of Mr. Gallo, but we were having dinner in - in a restaurant, and Mr. Bruch came down for a final drink and dessert or something like that.

Q. Okay.

Now, am I correct that you would have arrived in Philadelphia sometime around -- on the 31st of January of this year?

A. Sunday.

1 Q. Sunday would have been the 31st?

2 A. Right.

3 Q. And, let me ask, prior to coming to Philadelphia,
4 on how many occasions did you speak with Mr. Gallo
5 with regard to your deposition, and the testimony
6 that you would give?

7 A. A few telephone conversations. I don't recall
8 how many.

9 Q. Okay.

10 And, did you speak with Mr. Bruch on
11 the telephone prior to coming to Philadelphia?

12 A. Once, I believe.

13 Q. Okay.

14 Now, can you tell me at the time you
15 spoke with Mr. Bruch was Mr. Gallo on any extension, or
16 was it a conference call of any kind?

17 A. No, it was no conference call.

18 Q. Okay.

19 And, conversely, when you spoke with
20 Mr. Gallo, was Mr. Bruch on the line?

21 A. Neither.

22 Q. Okay.

23 Can you tell me what the substance of
24 the conversation between you and Mr. Bruch was during
25

1 the telephone call that you had?

2 A. Mr. Bruch indicated that he became aware of the
3 fact that I was going to depose again, and he said he
4 thought he would like to see me before.
5

6 Q. Okay.

7 And, that resulted in his coming to
8 Philadelphia the evening before the deposition; is
9 that correct?

10 A. I don't know whether he came to or what, but he
11 was there.

12 Q. Well, let me ask, -- let me ask you, where --
13 where did you meet with Mr. Bruch prior to the
14 deposition beginning yesterday?

15 A. In Bookbinders at dessert.

16 Q. Okay.

17 Now, at the time that you met with Mr.
18 Bruch, was Mr. Gallo present?

19 A. At that time --

20 Q. Was there --

21 A. -- I was having dinner with Mr. Gallo, right.

22 Q. Okay.

23 Was there anyone else from Mr. Gallo's
24 office present at Bookbinders?

25 A. No, there was no one else.

Q. Now, can you tell me what you discussed with Messrs. Bruch and Gallo at Bookbinders, prior to being deposed yesterday?

MR. GALLO: Objection to the form.

THE WITNESS: Just -- just general information, what to expect at a deposition such as this.

BY MR. COHEN:

Q. Did you review with them your deposition of June 30th, 1980?

A. No, we did not.

Q. Had you previously reviewed that deposition of yours, prior to coming to Philadelphia?

A. With those people?

Q. No, on your own.

A. Oh, yes, I read it on the plane coming in.

Q. Now, did you have occasion, prior to reviewing your deposition, to look at any of the documents and records that you turned over to Counsel subsequent to your June 30th deposition, as referred -- as reflected in Exhibit 29, I believe it is.

A. Mr. Gallo sent me copies of the material that he was going to use at this deposition, and asked me to

1
2 look in my file for the original copies, so that I
3 could read from the original copies. And that is
4 all I brought.

5 Q. Okay.

6 But, my -- my question is not
7 what you brought with you, but in gathering and prepar-
8 ing yourself for this deposition, did you have occasion
9 to review any of the documents and records that you
10 subsequently gave to Ms. Gibson with -- as reflected
11 in Exhibit 28?

12 A. No, I don't remember exactly which ones I sent
13 to her. I believe Exhibit 29 was one of them, but
14 that's all I remember.

15 Q. Okay.

16 Do you recall looking at Exhibit
17 #29, prior to coming down for this deposition?

18 A. No, no.

19 Q. Now, I believe yesterday, when we were discuss-
20 ing the state of your awareness of asbestos disease,
21 you suggested that you were not aware of articles that
22 may have gone back to the 1930's concerning carcinoma
23 and asbestos until some time shortly after your
24 arrival at Keasbey-Mattison; is that --

25 A. That is right.

1
2 Q. Okay.

3 Now, can you tell me whether you were
4 aware of any work that was being done at the Saranac
5 Laboratories concerning the relationship of cancer and
6 asbestos exposure, prior to coming to Keasbey and
7 Mattison?

8 MR. CREEDON: Objection.

9 MR. BRUCH: Objection.

10 THE WITNESS: Obvious from my
11 previous answer, no.

12 BY MR. COHEN:

13 Q. And, subsequent to your arrival at Keasbey-
14 Mattison, can you tell me when it was for the first
15 time that you became aware of work or research having
16 been done at the Saranac Laboratories with regard to
17 cancer and asbestos exposure?

18 MR. CREEDON: Objection.

19 THE WITNESS: On that subject, in
20 particular, this is the first time I've heard that
21 it was done.

22 BY MR. COHEN:

23 Q. So, for the first time, when you came with
24 Keasbey and Mattison, you were aware of IHF, and you
25 were aware of the Saranac Laboratories as being separate

groups that had researched the issue of cancer and asbestos?

MR. GALLO: Objection, that's not what he said.

MR. CREEDON: Objection.

THE WITNESS: I just said that I didn't -- I was never aware of Saranac having done work on asbestos and cancer. I was very much aware of Saranac's work as a separate entity from Industrial Hygiene Foundation. I knew of both organizations, but I was not aware of any work that was done relating asbestos to cancer.

BY MR. COHEN:

Q. Have you ever had --

A. -- of those two organizations or any organizations.

Q. Did there ever come a time that you requested any studies or information that would have been generated by Saranac Laboratories concerning asbestos disease, once you got to Keasbey-Mattison?

A. No --

MR. CREEDON: Objection.

THE WITNESS: -- no, there was no

reason for me to go that way.

BY MR. COHEN:

Q. Okay, why was there no reason for you to obtain medical or scientific information --

A. I didn't know --

Q. Let me -- if I can, Mr. Horowitz, let me finish the question.

Why did you not feel it was necessary to obtain any documents or records concerning scientific or medical work that had been done in this area?

A. I didn't say that.

Q. Okay, I'm sorry.

A. I said, I did not approach Saranac for any work that they had done relating asbestos to cancer, because I had no knowledge that they did any work with cancer. I -- my approach was to contact the insurance company and have them do a literature search for me. And I was satisfied with the limited search they did -- limited results they gave me.

Q. Okay.

A. It was a new concept to me.

Q. Okay.

Did you ever check to determine whether

Saranac had done any work with regard to the relationship of asbestosis and asbestos exposure?

MR. GALLO: Objection.

MR. CREEDON: Objection.

THE WITNESS: I didn't check, but I

-- I think I knew that they had done some, yes.

BY MR. COHEN:

Q. Okay.

So, you were aware, at least that that area had been looked into by Saranac?

A. My view of Saranac was that it was a isolated research area, originally started by a medical person who was interested in lung problems in general. I didn't know of them doing any specific work with asbestos at all.

Q. Were you aware of whether any asbestos miners or manufacturers had funded any research or studies at Saranac?

MR. CREEDON: Objection.

THE WITNESS: I was not aware of that at all.

BY MR. COHEN:

Q. Now, at the time that you came to Keasbey-Mattison, did you believe that, as we discussed

1
2 yesterday, distance was a factor which might mitigate
3 disease, the disease process, with regard to asbestos
4 exposure?

5 MR. GUSKY: Distance from what?

6 MR. COHEN: Distance between an
7 individual and the -- and the location of
8 asbestos.

9 THE WITNESS: In the general field of
10 industrial hygiene, distance is a means of
11 control. For instance, a person in Florida
12 could not or would not -- claim -- could not
13 claim that he was exposed to asbestos in
14 Canada. That's distance, too.

15 BY MR. COHEN:

16 Q. Well, let's -- would that include an individual
17 in Florida who was exposed to asbestos that was sent
18 from Canada? If you're talking about --

19 A. No, I'm talking about the --

20 Q. -- physical proximity, okay.

21 A. -- physical exposure to an -- to a dust
22 exposure.

23 Q. Okay.

24 A. So, distance is a means of control.

25 Q. Now, were you aware when you began work at

1
2 Keasbey-Mattison of whether there were studies being
3 done with regard to neighborhoods surrounding asbestos
4 manufacturing facilities, and the occurrence of
5 asbestos related disease in those neighborhoods?

6 MS. GIBSON: Objection.

7 MR. BRUCH: I Object to this question.
8 It's beyond Direct. And I don't think the
9 witness has indicated any factual knowledge of
10 this or expertise in this.

11 MR. COHEN: Well, whether he has
12 factual knowledge is what I'm trying to
13 determine.

14 MR. BRUCH: Well, that's already been
15 done, brought on in direct.

16 MR. GUSKY: Objection, also, to
17 relevancy.

18 MR. GALLO: And a lack of foundation.

19 MR. CREEDON: I join in all those
20 objections.

21 MR. COHEN: Okay.

22 THE WITNESS: I answer, in spite of
23 all the objections, right?

24 MR. COHEN: Yes, you do.

25 THE WITNESS: Since at that time, the

1 concern about cancer was not as great as it is
2 today, and as it progressed in the years since
3 that time, definitely no concern -- there was
4 no concern with the atmosphere outside of the
5 plant, except for air pollution type of
6 thing.
7

8 BY MR. COHEN:

9 Q. Whose concern are we talking about, Keasbey-
10 Mattison was not as concerned --

11 A. No --

12 Q. -- then as today?

13 A. -- I'm talking about Industrial --

14 MR. GALLO: Objection.

15 THE WITNESS: I'm talking about
16 Industrial Hygiene people, in general.

17 BY MR. COHEN:

18 Q. Are you --

19 A. Those of us in the field, the professionals
20 in the field.

21 MR. BRUCH: I have a further
22 objection, since this is a deposition for
23 trial, I would like for it to be conducted
24 as if it was trial, not a dialogue, questions
25 and answers, questions and answers. I would like

the witness to wait for the Counsel has completed his question and we have it in a formal manner.

THE WITNESS: Yeah, I'm sorry about that.

BY MR. COHEN:

Q. Is it your testimony that you can speak for the Industrial Hygiene community, and state that in 1960, the occurrence, or the relationship between carcinoma and asbestos was not as much a concern then as it is today; is that your testimony?

MR. GALLO: Objection, beyond the scope.

MR. BRUCH: Same objection.

THE WITNESS: I cannot speak for every single person who professed to be an industrial hygienist. But, having worked with the Division of Industrial Hygiene for nine years and four years subsequent to that, I feel that I was expert enough to know the general attitude in that with respect to the question you asked about exposure to the public outside.

BY MR. COHEN:

Q. Well, you were not even aware of a relationship

1 between cancer and asbestos --

2 A. Right.

3 Q. -- until 1960?

4 A. No, I was not aware, and I can assure you --
5 I'm not sure that not everybody was aware -- unaware,
6 but most people were not aware --

7 MR. GALLO: Move to strike. It's
8 unresponsive.

9 THE WITNESS: -- in my field.

10 BY MR. COHEN:

11 Q. Was there medical literature though know -- now,
12 as you sit here today, are you aware that there was
13 a body of medical and scientific literature going back
14 to the 1930's, which suggested that there was a rela-
15 tionship or might be a relationship between asbestos
16 exposure and carcinoma?

17 MR. GALLO: Objection.

18 MR. MENDELOW: Objection.

19 MR. BRUCH: Objection to the form.

20 MR. GALLO: Off the tape, please.

21 MR. FORTE: We're going off the record.

22 The time is 10:26.

23 (Whereupon the following discussions
24 were off the videotape record.)
25

Leon Horowitz - Cross

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MR. GALLO: Despite numerous objections by Plaintiffs' counsel yesterday to questions to this witness calling for expert opinion and opinions as of today, you have now proceeded to examine him as an expert. That is clearly beyond the scope of the examination on the direct and the status in which he was called as a witness, namely as a fact witness. He testified to his knowledge and procedures during his years at Keasbey-Mattison.

MR. COHEN: Well, let me just state that Mr. Horowitz was hired and performed in the capacity --

MR. GALLO: I haven't finished yet.

MR. COHEN: Oh, I'm sorry. We took this long hiatus, so I assumed you were.

MR. GALLO: No, you interrupted me.

MR. COHEN: Take a shorter period of time in breathing.

MR. GALLO: It's beyond the scope of the direct. It's also irrelevant. And I'm not going to permit you to put your case on as far as state of the art through this witness by

1
2 introducing on cross examination, the
3 existence of articles, the studies done by
4 various research institutes and the like.
5 That's part of your Case-in-Chief, and it's
6 improper to put it on at this time.

7 MR. COHEN: Well, when you say
8 you're not going to permit me, are you telling
9 me that as the attorney that brought the witness
10 here, you're going to have him not answer any
11 questions?

12 MR. GALLO: I can't instruct him not
13 to answer, obviously.

14 MR. COHEN: Well, you've already said
15 that you're not going to permit something. I'm
16 curious --

17 MR. GALLO: At the time of trial,
18 I will move that this entire line of questioning
19 and your cross examination be stricken.

20 MR. COHEN: Okay, well, let me just
21 state that this witness was the industrial
22 hygienist for two --

23 MR. GALLO: You don't have to give me
24 an explanation of how you're going to proceed.
25 Proceed.

1
2 MR. COHEN: No, I'm just responding
3 to the objections, so that my position is on
4 the record. This witness was hired and acted
5 in a certain capacity for a period when he was
6 working for Keasbey-Mattison and for Certainteed.
7 I am entitled to inquire as to the state of his
8 knowledge in performing the function which had a
9 direct bearing on the health and welfare of
10 the Plaintiffs that I represent that worked at
11 that factory, or those factories or
12 asbestos-producing plants.

13 Now, to the extent that Keasbey-
14 Mattison had knowledge, and to the extent that
15 that level of knowledge may have been less than
16 or greater than the knowledge of others is
17 the entire subject of this litigation. So,
18 I'm going to proceed, and you can make whatever
19 motions you deem appropriate later, at the time
20 of trial.

21 MR. GALLO: You've already inquired
22 as to his knowledge, and now --

23 MR. COHEN: I haven't even begun to
24 inquire as to his knowledge.

25 MR. GALLO: You already have, and you're

1 now asking whether or not he was aware of
2 certain articles having been written at a certain
3 point in time, when he has already told you what
4 his level of awareness was. I, therefore,
5 object. It's duplicative, and I think you're
6 wasting the time of the -- all the attorneys
7 here.

8
9 MR. COHEN: That's okay, they're
10 billing it out and being compensated for it.
11 So, there is no problem.

12 MR. CREEDON: Whether or not we're
13 being compensated for it or not --

14 MR. COHEN: Excuse me, well, I
15 intend to conduct this deposition the way I
16 deem fit, and if people don't like it, they're
17 perfectly free to leave. My questions yesterday
18 dealt specifically with the knowledge of carcinoma
19 prior to 1960, I'm now going into another
20 series or body of knowledge that was existing
21 prior to 1960, to determine whether this witness
22 who acted as a Chief Industrial Hygiene Officer
23 for the plant that Plaintiffs worked at, did or
24 did not know certain things. And, I'm going to
25 proceed in a number of other areas, other than

1 carcinoma or exposure of neighborhoods around
2 plants.
3

4 MR. GALLO: The other reason for
5 my objection is that I believe your last
6 question was stated in terms of, as you sit
7 here today, what is your current knowledge.
8 Are you not aware that certain articles or
9 studies or whatever existed at point X in
10 time, and clearly, his knowledge today is not
11 relevant to the litigation which stems from
12 his work for K&M and Certainteed from 1960 to
13 1968. There are many things he may have
14 learned between 1968 and 1981, and that
15 clearly is not relevant. And to the extent
16 that you ask questions like that, I think
17 you're really wasting all of our time.

18 MR. COHEN: Well, I think the Jury
19 has a right to assess the knowledge of the
20 witness at this time for whatever appropriate
21 purpose they may deem fit. So, I'm going to
22 continue.

23 MR. BRUCH: Only with the instruction
24 that his knowledge as to that time period,
25 '60 to '68. You're not going to ask him

knowledge of what he knows today, are you?

MR. COHEN: That was my last question. I still think the Jury has a right to assess since there has been a larger accumulation of knowledge between 1960 and today, whether Mr. Horowitz is or is not aware of certain things in 1982. I think that has a bearing on their view of his testimony, and the state of knowledge that he has as a witness.

MR. BRUCH: But, just keep in mind, he was presented as a fact witness.

MR. COHEN: I understand that, but a fact witness can still be looked at in terms of his veracity and in terms of his competence and what weight the Jury may see fit to give this witness' testimony as a fact witness.

MR. BRUCH: I think you're wrong on this, let's be honest.

MR. COHEN: It wouldn't be the first time.

MS. GIBSON: It will be argued at trial.

MR. MENDELOW: That's right. I'll join in Mr. Gallo's objections.

1
2 MR. GALLO: One other ground for
3 objection, and that is that if you do question
4 him regarding knowledge that accrued to Mr.
5 Horowitz after he went with American Mutual,
6 that is, after 1968, I'm not sure whether
7 you're taking discovery at this point for other
8 litigation in which you may be involved, or on
9 behalf of other Plaintiff's attorneys in
10 Louisiana or else where, and I would caution
11 you in doing that, since you are --

12 MR. COHEN: Well, don't caution me.
13 I'm taking depositions for the purpose that they
14 were noticed and no other.

15 MR. GALLO: I think that the witness
16 should be made aware that you may be attempting
17 to develop knowledge as to American Mutual
18 through him.

19 MR. COHEN: Well, you want to tell the
20 witness that, that's fine. That happens not to
21 be what I'm doing. The witness --

22 MR. GALLO: It had that effect.

23 MR. COHEN: Well, I don't frankly care
24 whether it does or does not have that effect.
25 I am taking this deposition to determine the

1 state of knowledge of this witness, Keasbey
2 and Mattison Corporation and Certainteed, as
3 it relates to the clients that I represent.
4 I am not taking discovery for any other Plaintiff's
5 counsel, and to the extent that you're suggesting
6 otherwise, if you have anything to represent
7 that I am then I would appreciate you making that
8 known to the Court at this point.
9

10 MR. GALLO: Well --

11 MR. COHEN: If not, let me continue
12 the deposition.

13 MR. GALLO: All I'm suggesting is
14 that this is a Keasbey and Mattison, Certainteed
15 involvement that you're concerned about that
16 you limit your cross examination to matters
17 touching on his contact with those companies.

18 MR. COHEN: That's exactly what I've
19 been doing.

20 MR. GALLO: I see, very well.

21 MR. MASON: I would like to add an
22 objection to the form of your last question,
23 and any other questions which include the
24 phrase, body of knowledge.

25 MR. COHEN: Would you like me -- just

1
2 so we're clear, Mr. Mason, would you like me
3 to specifically refer to the documents in my
4 testimony or my questioning of the witness, I
5 will be very happy to do that.

6 MR. MASON: No, I just don't want you
7 to use the phrase, body of knowledge.

8 MR. COHEN: I'll try and rephrase
9 that, so it comports with something that
10 might be more acceptable.

11 MR. BRUCH: So I don't interrupt
12 you once we're on the video, may I have a
13 continuing objection, as to any knowledge
14 post 1968 that this man has?

15 MR. COHEN: Sure.

16 MR. GALLO: Obviously, I would want
17 the same continuing objection.

18 MR. COHEN: We agreed yesterday that
19 the objection of one inures to the benefit
20 of the immediate world.

21 MR. BRUCH: I took exception to
22 that agreement. I want to make my own.

23 MR. COHEN: That's right.

24 MR. PAUL: Before we go back on
25 the videotape, I would also caution the witness

1 which Mr. Gallo just sort of engaged in, it
2 was engaged in it at great length yesterday
3 and by Mr. Cohen yesterday, on the question
4 of American Mutual. If I understand your
5 objection, gentlemen, to the use of this
6 gentleman's testimony about post 1968
7 knowledge, possibly being, or not being rele-
8 vant to the particular lawsuits in which
9 Mr. Cohen represents a Plaintiff and in which
10 we represent a Plaintiff, I suggest that
11 that matter is best argued not at this
12 point, but at the time of trial, and only
13 at the time of trial.
14

15 MR. BRUCH: It is my understanding
16 that you're only in one case; is that right?

17 MR. PAUL: That's right. I'm only
18 referring -- and again, I'm only referring --

19 MR. COHEN: It's irrelevant whether
20 he's here for one or fifty. He's got the
21 same rights.

22 MR. PAUL: Let's go back on the
23 video. I just want to note it before we go back
24 on the video, our objections to Defense objec-
25 tions to this line of testimony without indicating

whether, in fact, we intend to use this line of testimony or any of Mr. Cohen's testimony in our case.

MR. GALLO: Now that we've gotten all that out of the way.

MR. FORTE: We're now back on the record. The time is 10:36.

BY MR. COHEN:

Q. Mr. Horowitz, at the time you came to Keasbey and Mattison in 1960, were you aware of an alleged association between asbestos and the development of asbestos related diseases to persons who were non-occupationally exposed to asbestos?

A. No.

MR. GALLO: Objection.

MR. CREEDON: I join in the objection.

BY MR. COHEN:

Q. Did you ever, subsequent to your employ with Keasbey-Mattison, or Certainteed Corporation, ever make inquiry or direct anyone else to make inquiry to determine whether there were scientific or medical writings concerning this subject that we just discussed?

MR. GALLO: Objection.

Leon Horowitz - Cross

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MS. GIBSON: Objection.

MR. CREEDON: Objection.

MR. GALLO: May we have a continuing
objection?

MR. COHEN: Sure.

MR. BRUCH: I join in that
objection.

THE WITNESS: As the years progressed
some literature was coming across the desk
concerning that subject.

BY MR. COHEN:

Q. Can you tell me, specifically, what literature
was coming across the desk that touched upon, or
concerned the subject of the development of asbestos
related disease by persons who were not occupationally
exposed to asbestos?

A. A lot of the work had to do with Selikoff's
group.

Q. Are you speaking of Dr. Irwin Selikoff?

A. Yes, I am.

Q. And, what is the earliest that you recall
becoming aware as an industrial hygienist for
either Keasbey or Mattison or Certainteed Corporation,
that a body of medical or scientific literature was

1
2 being written on the subject?

3 A. I can't recall any specific dates.

4 Q. Do you recall whether you were employed by
5 Keasbey-Mattison -- Keasbey and Mattison, or Certainteed
6 at the time this information crossed your desk?

7 A. I can't even recall whether it was subsequent
8 to my employ with either company.

9 Q. I'm sorry, let me -- can I ask you, can you
10 just re-state your answer, you're not certain when it
11 came across your desk?

12 A. I'm not certain that that information, in
13 particular, for asbestos relating to people outside
14 of the plant who did not work with asbestos, whether
15 that information I obtained during the time I worked
16 for either of the companies, or after the company. I
17 can't be certain of the date.

18 Q. Now, to the extent that you were aware that
19 exposure to asbestos could cause the disease known as
20 asbestosis, as the industrial hygienist for Keasbey
21 and Mattison and for Certainteed Corporation, what
22 was your understanding of the mechanism that caused
23 the disease process?

24 A. I associate it with similar to any pneumoconiosis
25 disease, like silicosis. There was some kind of

1
2 undefined, at least for the layman of what happened
3 in the lungs of people that debilitated them.

4 Q. Well, when you say undefined, are you suggesting that
5 mostly lay people were not aware at the time you were
6 employed by both corporations, of the -- what caused
7 the disease process in the lung?

8 A. By undefined, I mean as a lay person, the
9 information we were getting from the medical people
10 were not clear to us, they were not clear themselves,
11 as to what the real causes or how the mechanism,
12 you asked me about the mechanism --

13 Q. That's correct.

14 A. -- how the mechanism works. And, I still am
15 not clear about that.

16 Q. In 19 --

17 A. Nobody is clear, as far as I know.

18 Q. As far as you know?

19 A. As far as I know.

20 Q. As of 1960, can you tell me whether you had
21 any knowledge concerning whether the mechanism could
22 be of chemical origin? In other words, interaction
23 chemically between the asbestos fiber and body tissue?

24 A. The discussions on that subject, and again, as
25 a non-medical person, the contribution that I would

1
2 have, would be mostly as a person who listens to what
3 the medical people say and there was confusion
4 there. The discussion went back and forth as far as to
5 whether it was physical, chemical or what, especially
6 with silicosis. And, this is a general thing, not
7 just asbestos.

8 Q. Well, let me confine my questioning to you,
9 though, of asbestos.

10 A. Right.

11 Q. Were you aware in 1960 that there was literature
12 suggesting that the disease process might be chemical
13 in nature?

14 MR. GALLO: Objection, he already
15 stated he's not a medical man.

16 THE WITNESS: I --

17 MR. COHEN: Excuse me, I don't
18 believe this calls for a medical opinion. This
19 calls for his knowledge as the industrial
20 hygienist and chief responsible officer for
21 those two corporations.

22 THE WITNESS: In view of the --

23 MR. BRUCH: I still think I should
24 object, because it's a medical question.

25 THE WITNESS: First, I would like to

1
2 correct something. I was not hired, nor did
3 I function as Chief Industrial Hygiene, what
4 did you call it?

5 MR. COHEN: Officer.

6 THE WITNESS: Officer, of either
7 company. I was hired, and my title was
8 Dust Control Engineer. My experience had
9 been in the general field of industrial
10 hygiene, of which only a minor part, as I
11 testified, had anything to do with asbestos.
12 Since asbestos was not a primary consideration
13 in my past experience, I had no reason to do
14 detailed research in a particular subject,
15 which was only one of the many, many subjects
16 and hazards and occupational diseases, and
17 therefore, coming almost as a neophyte in
18 asbestos, all the new information was obtained
19 subsequent to that, because now I did have a
20 particular interest in that subject.

21 BY MR. COHEN:

22 Q. Now, to the extent in 1960 that you had a
23 particular reason as a dust control engineer to acquaint
24 yourself with asbestos --

25 A. Yes.

1
2 Q. -- my question is whether and what steps you
3 took, to educate yourself to determine the process,
4 how the process in the body occurred that caused
5 disease?

6 A. I was interested, but I did not make any
7 attempt, not being a medical person, no.

8 Q. Can you tell me whose responsibility when you
9 first joined Keasbey and Mattison, it was, to make
10 those determinations?

11 A. Which determinations?

12 Q. As to the -- the possible health effects,
13 adverse health effects of asbestos on the body.

14 A. As an industrial hygiene engineer, it didn't
15 matter what the mechanism was of the disease. The
16 thing that mattered was, that there was a disease.
17 The method of protection is the same no matter what
18 the degree of the disease is. Well, in general, that
19 isn't true. But, specifically, for asbestos, silica
20 or whether asbestos was more hazardous than we thought
21 it was, or twice as hazardous or ten times as
22 hazardous, the engineering design is still the same.
23 So, therefore, I did not do any further -- but, I
24 accepted any literature -- I didn't accept it verbatim,
25 I took note of any discussions in that field.

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25

Q. Okay.

Can you tell me what individual at Keasbey and Mattison would have been charged with the responsibility of educating themselves to determine what problems might arise because the employees of that corporation were being exposed to asbestos, can you give me the name of an individual?

A. They had medical consultants. I believe Dr. Stabler comes to mind. Dr. Donald comes to mind.

Q. Dr. whom, I'm sorry?

A. Dr. Donald, I believe.

Q. Now, these were physicians, am I correct, that were used part time by the Corporation --

A. Yes --

Q. -- by Keasbey and Mattison --

A. Yes.

Q. -- at least?

Okay, they were general practitioners who would be utilized on a fee for services basis every time they would come into Keasbey and Mattison, or if they would see a Keasbey and Mattison employee?

A. I believe so.

Q. Okay.

1
2 These physicians were not specifically
3 engaged by Keasbey and Mattison to learn about and
4 treat asbestos related diseases? In other words, if
5 a Keasbey and Mattison employee fell down and hurt
6 himself at work, they might be seen by either Dr.
7 Stabler or Donald?

8 MR. MASON: I object to the form of
9 the question. It's mis-leading.

10 MR. GALLO: Object to the form.

11 THE WITNESS: I believe it is true,
12 but could I extend to that?

13 MR. COHEN: Surely.

14 THE WITNESS: -- and especially
15 allude to your form of questions of trying to
16 find more information about the actual cause or
17 chemical cause or so on of the disease. I --
18 I believe, and I'm almost sure that these two
19 doctors, or whoever they used, were approached
20 with that problem. I believe they admitted
21 readily they were not experts in the field, and
22 it is -- this is one of the reasons why they
23 were invited to the ATI to listen to Dr. Kenneth
24 Smith of Johns-Manville who definitely was much
25 more of an expert in this particular field.

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The general feeling I want to get across is that the knowledge that you're alluding to that we all should have had or had, we did not have and were looking for.

BY MR. COHEN:

Q. Okay, to whom were you looking to supply you with that sort of knowledge?

A. To whomever the literature, the organizations like IHF, the ATI, the Academy of Science meetings -- particular meetings on asbestos, in those areas we were looking.

Q. Did you believe that those companies who supplied Keasbey and Mattison with raw asbestos had any body of knowledge by which they could educate or assist Keasbey and Mattison in its search for looking at the disease, asbestos disease process?

MR. GALLO: Objection.

MR. MENDELOW: Objection.

MR. MASON: Objection, calls for an opinion.

MR. CREEDON: Objection.

BY MR. COHEN:

Q. Based on your knowledge in 1960, did you know whether any of the suppliers of raw asbestos to

1
2 Keasbey and Mattison had any information available to
3 them that could assist Keasbey and Mattison in these
4 areas?

5 MR. MENDELOW: Objection.

6 MR. GALLO: Objection. Calls for
7 hearsay and speculation.

8 MR. CREEDON: Objection.

9 THE WITNESS: It did not occur to
10 me --

11 MR. COHEN: Excuse me, I'm just
12 seeking to introduce it to determine the
13 state of knowledge of the witness, not to
14 prove the truth of the matter.

15 BY MR. COHEN:

16 Q. Go ahead.

17 A. It did not occur to me to go to foreign
18 countries to get this information.

19 Q. How about -- so, you have no knowledge, one
20 way or the other, is that what you're saying, as to
21 this -- as to -- as to what the suppliers of asbestos
22 may or may not have known through their experience?

23 A. I have no knowledge, no.

24 Q. Okay.

25 Was ther an individual that was

1
2 specifically hired by Keasbey and Mattison to be an
3 industrial hygienist for the Corporation?

4 A. No, there was not.

5 May I amend that a little bit? I
6 believe I was hired as a dust control engineer, rather
7 than perhaps somebody else, because I also had
8 industrial hygiene experience.

9 Q. Okay.

10 Other than yourself, was there anyone
11 else at Keasbey-Mattison, when you first joined them,
12 that was trained as an industrial hygienist, other
13 than yourself?

14 A. After I joined them?

15 Q. No, at the time you joined them, was there
16 another individual who was trained as or occupied
17 the position of industrial hygienist?

18 A. There were two individuals who as part of their
19 other job did some of the sampling work as far as
20 finding out, trying to find out what exposure was.

21 Q. Were they industrial hygienists by profession?

22 A. They were not industrial hygienists by profession.

23 Q. Okay.

24 What did they do, other than taking
25 dust samplings occasionally?

1
2 A. Well, Mr. May was a boiler engineer and designer.
3 And Mr. Schmidt had left before I came there, and I
4 don't know what his function was.

5 Q. So, other than -- whatever knowledge Dr. --
6 Doctors Donald and Stabler had, you were the only
7 individual who had experience as an industrial hygienist
8 at the time you joined Keasbey-Mattison, as a --
9 as a profession; is that correct?

10 A. As far as I know.

11 MR. MASON: I object to the form of
12 the question. I don't know whether you're
13 saying experience, or as a profession, or
14 both.

15 MR. COHEN: Okay, let me break the
16 question down.

17 BY MR. COHEN:

18 Q. Based on your experience, were you the only
19 individual at Keasbey-Mattison that had industrial
20 hygiene training?

21 A. I can only tell you what I believe, if you want
22 to accept that?

23 Q. I'll accept that.

24 MR. GALLO: Objection.

25 MR. MASON: Objection.

Leon Horowitz - Cross

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MR. BRUCH: Same objection.

THE WITNESS: I believe the dust was always a problem, and many other people, including Mr. Schneider and Mr. Spedding were aware of industrial hygiene as a technique, and tried to perform, or have performed the functions that an industrial hygienist should do, but they didn't have a -- a specialist.

MR. MASON: I withdraw my objection.

MR. COHEN: So, they were not trained -- certainly.

THE WITNESS: As far as I know, they didn't --

MR. GALLO: I withdraw mine, as well.

BY MR. COHEN:

Q. Now, when was the first time that you learned that there was no relationship or there was a theory that there was no relationship between the threshold limit value, and the development of carcinoma, and I include within that, mesothelioma?

MR. GALLO: Objection to the form of the question.

MR. BRUCH: Objection to the form.

MR. CREEDON: Objection.

Leon Horowitz - Cross

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THE WITNESS: I don't believe you can

include both mesothelioma and cancer together.

BY MR. COHEN:

Q. Is mesothelioma, to your knowledge, a form of carcinoma?

A. Yes.

MR. GALLO: Objection.

BY MR. COHEN:

Q. Then, let's discuss them separately, if you find it easier to do so.

Did there ever come a period of time that you learned as an industrial hygienist, or as a -- I'm sorry, as a dust control engineer for Keasbey-Mattison or Certainteed, that there may not be a relationship between the threshold limit value, and the development of carcinoma?

MS. GIBSON: Objection, to the extent that this asks about his knowledge after 1968.

MR. BRUCH: I have that same objection, also. Also, object on a technicality here, Mr. Cohen. He was a dust control engineer for Keasbey-Mattison. He had a different position with Certainteed.

MR. COHEN: All right, let me -- I

1 think that's -- that's a valid objection. Let
2 me confine my -- let me confine my questioning
3 then just to Keasbey and Mattison.
4

5 BY MR. COHEN:

6 Q. While you were employed by Keasbey and Mattison,
7 did you ever have occasion to learn that there was
8 not, or there's a body of medical or scientific
9 literature that suggested that you could not utilize
10 the threshold limit value or TLV, when you were talking
11 about a risk of carcinoma?

12 MR. MASON: I object to the phrase,
13 body of literature.

14 THE WITNESS: Nobody ever, in my
15 knowledge, discussed threshold limit related --
16 threshold limits in general related to cancer
17 in general. So, therefore, nobody discussed
18 threshold limit of asbestos to cancer. When it
19 became, let's say, if and when it became
20 accepted that asbestos was related to cancer, if
21 and when it became asbestos -- accepted, the
22 understanding would be that the ACGIH or anybody
23 that would create threshold limit values would
24 -- would not use a threshold limit value for a
25 cancer producing material. It would be zero.

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BY MR. COHEN:

Q. And why would it be zero as opposed to some standard above zero?

A. Because they don't know what quantity will cause cancer.

Q. Now --

A. And it still exists as a threshold limit, by the way. There is a threshold limit for asbestos now.

Q. That is correct, but does that threshold limit exist as insofar as the development of cancer is concerned?

MS. GIBSON: Objection.

THE WITNESS: As I said, they do not -- they do not relate it to cancer, threshold limit.

MR. GALLO: Move to strike the whole last answer as non-responsive.

BY MR. COHEN:

Q. Now, that was as to your knowledge, as of the time you were employed by Keasbey-Mattison --

MR. GALLO: That's why I move to strike it.

MS. GIBSON: Not that last question.

1

2 BY MR. COHEN:

3 Q. Can you tell me at the time that you became
4 employed by Certainteed Corporation, what was your
5 position with Certainteed?

6 A. I continued as a dust control engineer, doing
7 industrial hygiene work.

8 Q. Now, at any time while you were employed by the
9 Certainteed Corporation, did you ever have occasion to
10 learn that the threshold limit value might not be
11 applicable when dealing with carcinoma?

12 A. The same answers I gave before. It was -- there
13 was no discussion about threshold limit relating to
14 cancer.

15 Q. So, you --

16 A. That I was aware of.

17 Q. Now, let me ask you again the same questions
18 with regard to mesothelioma. First, when you were
19 employed by Keasbey-Mattison, did you have any knowledge
20 or understanding that threshold limit value was
21 applicable when discussing mesothelioma?

22 A. The same answer as before. There was no
23 relationship between -- or discussion of a relation-
24 ship between threshold limit and mesothelioma as a
25 cancer.

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Q. No discussion that you had with anyone?

A. That I knew of.

Q. And, again, during the period of time that you were employed by Certainteed, would your answer be the same?

A. Same thing.

Q. Now, when you first came with Keasbey-Mattison in 1960, were you aware of any scientific or medical literature suggesting that smoking plus exposure to asbestos could increase the risk of development of asbestos related disease?

A. Not at that time.

Q. At what point did you become aware of that postulate that -- that --

A. When papers were written, especially at the meeting in -- at the Waldorf-Astoria.

Q. This would be 1964?

A. That's right.

Q. And, at that time, you were employed by Certainteed; is that correct?

A. That's correct.

Q. Now, I believe yesterday, in your testimony, you stated that Certainteed had a division that was called Best Wool.

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2 A. Wall, W-A-L-L, Best Wall.

3 Q. And, that that was ultimately sold to Georgia-
4 Pacific in or about 1965; is that correct?

5 A. That is correct.

6 MR. BRUCH: I object to this line of
7 questions. It's not pertinent to any of
8 the Plaintiffs on distribution that this has
9 been noticed for.

10 MR. COHEN: Well, that's not correct
11 with regard to Plaintiffs that I represent.

12 BY MR. COHEN:

13 Q. Can you tell me what the Best Wall Division of
14 Certainteed did, what they manufactured or distributed?

15 A. They were manufacturer of gypsum -- products,
16 gypsum wall products.

17 Q. Did those products contain asbestos, to your
18 knowledge?

19 A. To my knowledge, no.

20 Q. And, do you recall in what building Best Wall
21 operated in?

22 A. I don't know of any Best Wall operation in the
23 Ambler area at all.

24 Q. Okay.

25 Where was the Best Wall operation of

1

2 Certainteed?

3 A. I never visited any, but I think they had one
4 in Delaware, and maybe out in the West Coast, but
5 I don't know.

6 Q. Do you know where on the West Coast?

7 A. I don't know.

8 Q. Was Best Wall an existing entity of Keasbey
9 and Mattison prior to Certainteed taking over
10 assets of Keasbey-Mattison?

11 A. No, it was Certainteed, as such.

12 Q. Now, I believe you stated that there was a --
13 a plant located in St. Louis --

14 A. Yes.

15 Q. -- which belonged to Certainteed Corporation at
16 some point?

17 A. Yes.

18 Q. Do you know whether that plant in St. Louis was
19 also a plant of Keasbey-Mattison?

20 A. Yes, it was.

21 Q. And, can you tell me what was manufactured at
22 that plant?

23 A. Asbestos cement --

24 MR. MASON: I object to --

25 THE COURT REPORTER: I'm sorry?

MR. MASON: I object to any questions
pertaining to St. Louis plant as irrelevant.

MR. COHEN: Okay.

MR. CREEDON: Join in the objection.

BY MR. COHEN:

Q. Was there any other asbestos containing product
produced at that plant?

MR. BRUCH: I object to this question.
Are you still referring to Certainteed's time?

MR. COHEN: Well, let me ask, while
he was at Keasbey and Mattison plant.

BY MR. COHEN:

Q. Are you aware of any other asbestos containing
products --

A. I'm not sure. I think corrugated asbestos
cement was built, too, but I'm not sure.

Q. Now, when you say, corrugated asbestos cement,
can you tell me specifically what you're talking
about?

A. That's the corrugated roofing type of thing.

MR. BRUCH: During what employer?

THE WITNESS: I -- I can't really
recall. And I'm not even sure they made it
there.

MR. BRUCH: I move to strike the

answer then.

BY MR. COHEN:

Q. Now, was there a plant number five, at the Ambler facility?

A. I don't remember a plant number five, unless it was the textile mill, before it moved up to Meredith, but that was before my time.

Q. So, by the time you arrived at Keasbey and Mattison in 1960, there was no longer a textile producing facility at Ambler?

A. There was no longer a textile producing plant at Ambler.

Q. After that textile producing facility moved to New Hampshire, can you tell me what went into that particular location?

A. I can only tell you what was in the location after I --

Q. Okay, if you would.

A. There were various processes for making tex -- asbestos textile materials.

Q. Let me back track, I think I may have misunderstood you.

At the time you were with Keasbey-

1
2 Mattison, was there an existing asbestos containing
3 textile facility at Ambler?

4 A. Not at Ambler, no.

5 Q. All right.

6 That -- I believe you stated that
7 prior to coming to Keasbey and Mattison, what had
8 existed as a textile facility moved already up to
9 New Hampshire?

10 A. Had already been moved.

11 Q. Okay, now, do you know what went into the
12 space at Ambler, after the textile facility was
13 moved to New Hampshire?

14 A. I can't possibly -- I don't know, no.

15 MR. COHEN: Now, could we just go
16 off the video for a second?

17 MR. FORTE: Yes, sir, we're now going
18 off the videotape. This is the end of videotape
19 number six. The time is 11:02.

20 (Whereupon a break was taken from
21 11:02 a.m. to 11:15 a.m.)

22 BY MR. COHEN:

23 Q. You testified yesterday --

24 MR. FORTE: We're now back on the
25 record. This is the beginning of videotape

number 7. The time is 11:15.

BY MR. COHEN:

Q. Mr. Horowitz, you testified yesterday that sometime around September of 1960, a Dr. Knox from Turner and Newall spoke with you and a number of other people at a meeting and at that time the subject of cancer and asbestos exposure and mesothelioma and asbestos exposure came up; is that correct?

MR. MASON: I object to the form of the question about from Turner and Newall. The witness did not testify that he knew exactly what Dr. Knox's relationship was --

MR. COHEN: I believe --

MR. MASON: -- in fact, I think if you read the papers, that the witness, that Mr. Gersky produced --

THE COURT REPORTER: That Mr. --

MR. COHEN: Gusky.

MR. MASON: Mr. Gusky produced, you'll find that Dr. Knox was described as a consultant to Turner and Newall, not from Turner and Newall.

MR. COHEN: Anything else?

MR. PAUL: However, the witness did, in

fact, make that statement.

MR. COHEN: He made his statement yesterday, Mr. Mason, that Dr. Knox was from Turner and Newall.

MR. MASON: He did not use that phrase. I don't believe he did.

MR. COHEN: Well, whether he did or did not is already transcribed, so --

MR. PAUL: The Jury will note what he said.

MR. COHEN: Okay.

BY MR. COHEN:

Q. Mr. Horowitz, at the time Dr. Knox spoke with you, and the subjects of cancer and mesothelioma came up, was, to your knowledge, Keasbey and Mattison, receiving any raw asbestos fiber from any mines in the Dominion of Canada?

A. I, of course, can't relate it to the exact time, but I knew that they were getting some fibers from Canada.

Q. Now, I believe yesterday when Mr. Shein questioned you, you stated that you were familiar with the name, Cassiar.

A. Yes, I was.

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Q. And, is it your belief that Cassiar was a supplier of raw asbestos fiber to Keasbey and Mattison?

A. Yes.

Q. Now, also yesterday, we discussed Turner Brothers' Asbestos. Do you recall that?

A. Yes.

Q. Now, can you tell me what your understanding was of what Turner Brothers' Asbestos was as of 1960?

MR. MASON: I object to your question. It calls for an opinion.

MR. COHEN: Certainly, any facts that an individual acquires by virtue of their existence on a day to day basis calls for some accumulation of knowledge and opinion.

MR. MASON: No, you're asking him what his understanding was, instead of asking him, what did he know, and that's what I'm objecting to.

MR. COHEN: Okay.

THE WITNESS: I did not know, and I had a general feeling of a Turner Newall being an English company that operated worldwide and

owned Keasbey and Mattison. That's all I know.

BY MR. COHEN:

Q. Can you make --

MR. MASON: I move to strike.

BY MR. COHEN:

Q. Can you make any relationship between Turner Brothers' Asbestos and Turner and Newall?

A. I cannot, no.

MR. MASON: I object.

BY MR. COHEN:

Q. Now, you stated that at least as of September of 1960, you became aware of the fact that it was the European experience, more specifically, the English experience, that there was a relationship between cancer and exposure to asbestos through your discussions with Dr. Knox; is that correct?

A. That was the information Dr. Knox passed on to us.

Q. Did you have any reason to doubt the -- that discussion by Dr. Knox?

A. I never doubt a professional. I just absorb the information and use it, if I can.

Q. Okay.

Now, as of September, 1960 forward,

1 while you were employed by Keasbey-Mattison, did --

2 A. '64?

3 Q. No, 1960 forward, --

4 A. Yeah.

5 Q. -- while you were employed by Keasbey and
6 Mattison, did Keasbey and Mattison ever advise its
7 own employees that they may be subject to developing
8 cancer of the body by virtue of their working with
9 asbestos fiber, and I mean in the sense of specifically
10 stating cancer, or carcinoma.
11

12 MR. GALLO: Objection.

13 THE WITNESS: The whole industry was
14 in a state of shock, if you want to call it, --

15 MR. GALLO: Objection, nonresponsive.

16 MR. COHEN: Well, they --

17 THE WITNESS: -- they didn't accept --

18 MR. GALLO: Excuse me, I'm going to
19 object and move to strike.

20 BY MR. COHEN:

21 Q. They did not?

22 A. They did not.

23 Q. Okay.

24 Now, likewise, you were advised as
25 were the other individuals president -- present, rather,

1
2 that mesothelioma was a disease that an individual
3 could develop by virtue of asbestos exposure; is
4 that correct?

5 A. I was advised by Dr. Knox, as I said, but,
6 again, that doesn't mean it was accepted.

7 Q. It doesn't mean it was rejected, though,
8 does it?

9 A. It doesn't mean it was rejected, it doesn't
10 mean it was accepted. It was a piece of knowledge
11 that required further investigation.

12 MR. GALLO: Objection.

13 BY MR. COHEN:

14 Q. Other than Dr. Knox, you were not aware of any
15 body of scientific or medical writings that discussed
16 these same premises that Dr. Knox was now telling you
17 about; were you?

18 A. The premise of mesothelioma.

19 Q. Or cancer.

20 A. Cancer, I believe I stated that I had read,
21 and then investigated through the insurance company
22 about a month or two before, right.

23 Q. So, other than Dr. Knox, you knew that there
24 was some scientific and medical information available
25 that suggested that cancer could be caused by asbestos

1 exposure?

2 A. Cancer, yes.

3 Q. Okay.

4 And, did you tell the employees at
5 Keasbey and Mattison, that they could develop cancer
6 because of their asbestos exposure?
7

8 A. The same attitude --

9 MR. GALLO: Objection.

10 MR. CREEDON: Objection.

11 BY MR. COHEN:

12 Q. Yes or no?

13 A. No.

14 MR. GALLO: Excuse me, I object to
15 the form of the question, do you mean him,
16 personally?

17 BY MR. COHEN:

18 Q. You.

19 A. I did not.

20 Q. Okay.

21 To your knowledge, did anyone
22 else --

23 MR. PAUL: Is my objection noted --
24 just a second. I also object to the
25 question.

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BY MR. COHEN:

Q. Did you advise, or did you instruct anyone else to advise the employees at Keasbey-Mattison that they could develop cancer by virtue of their exposure to asbestos?

A. That was not my function. I did not advise anybody to do that.

Q. Okay.

To your knowledge, did anyone at Keasbey and Mattison advise their own -- okay, to your knowledge, did anyone at Keasbey and Mattison advise employees of Keasbey and Mattison that they could develop cancer because of their exposure to asbestos?

A. They did not. They were not sure of it themselves.

MR. PAUL: Can we go off the videotape for just a --

MR. COHEN: I'm going to object to that, and move -- move to strike as not being responsive.

MR. STEWART: Excuse me, we're now going off the record. The time is 11:22.

(Whereupon the following discussions were held off the videotape.)

1
2 MR. PAUL: I want to note my objection
3 to this series of questions, because it's our
4 contention that in our case, and I'm referring
5 to Weisberg and Bushman case only, the question
6 of the conduct of the employer and what the
7 employer knew or did know or told or did not
8 tell the employees is irrelevant and objection-
9 able in that particular case.

10 Now, I want my objection noted
11 generally to the line of questions by Mr.
12 Cohen and by any Defendants on that particular
13 point. I don't want to have to make the
14 objection each time, but I want our objection
15 to the line of question noted. That's the
16 only -- I don't see any reason to put that on the
17 videotape.

18 MR. BRUCH: I join in that
19 objection.

20 MR. STEWART: We're now back on the
21 record. The time is 11:23.

22 BY MR. COHEN:

23 Q. Mr. Horowitz, after being advised by Dr. Knox
24 of the existence of mesothelioma as a disease which
25 could develop because of asbestos exposure, did you ever

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2 advise, you, personally, ever advise any employees
3 at Keasbey and Mattison that they may face that health
4 hazard risk, because of their exposure?

5 A. I did not.

6 Q. Do you know whether anyone else at Keasbey-
7 Mattison so advised its employees?

8 A. I do not know that.

9 Q. Okay.

10 Now, moving forward in time, once
11 you were hired as an employee of the Certainteed
12 Corporation as an industrial hygienist, in addition
13 to a dust control engineer, did you advise any
14 Certainteed employees of the cancer or mesothelioma
15 risk that they may face?

16 A. You're talking about employees who might face
17 that, but not management. I advised management, of
18 course. But, you don't mean management?

19 Q. No, I'm talking about employees.

20 A. Employees, no, I did not.

21 Q. Management was already aware that these two
22 diseases could exist by virtue of their attendance
23 at that September meeting with Dr. Knox?

24 MR. BRUCH: Objection.

25 THE WITNESS: Not the Certainteed

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people. They were not there.

BY MR. COHEN:

Q. Well, --

A. You asked me when Certainteed took over, whether I advised employees who were exposed. And I was just trying to clarify I had -- I did advise the management, but I did not advise the particular workers.

MR. BRUCH: I would just like to raise my objection that there were no Certainteed employees at the meeting with Dr. Knox.

MR. COHEN: That's correct. I apologize for that.

THE WITNESS: That was a mistake.

BY MR. COHEN:

Q. Now, and that is the reason, therefore, that you advised Certainteed management of the --

A. New management.

Q. -- the new management of what had occurred at that meeting with Dr. Knox; is that correct?

MR. BRUCH: Objection.

BY MR. COHEN:

Q. Mr. Horowitz, is that correct?

A. What was the question again?

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Q. Okay.

Since there was a new corporation --

A. Right.

Q. -- you advised them of the content of your discussions with Dr. Knox as of September, 1960?

MR. BRUCH: Objection.

THE WITNESS: I don't know if I advised them of a particular meeting with Dr. Knox, but I advised them of the existing knowledge or questions concerning cancer and mesothelioma at the time. That's management.

MR. COHEN: Right.

BY MR. COHEN:

Q. Now, once management was made aware of that information, do you know whether anyone on behalf of management at Certainteed Corporation advised Certainteed employees that they might face risks of carcinoma or mesothelioma because of asbestos exposure?

MR. BRUCH: Objection.

THE WITNESS: Based on the questionable at that time, of the truth of that statement, they did not, no, so advise.

MR. COHEN: Okay, I'm going to object,

and move to strike.

MR. BRUCH: I object to counsel asking questions and moving to strike answers he doesn't like.

MR. COHEN: Well, no, it's an answer that's not responsive to the question.

MR. BRUCH: I thought it was perfectly responsive.

MR. COHEN: Fine. And I'll follow it up then --

BY MR. COHEN:

Q. Mr. Horowitz, can you tell me how it is that you're able to testify as to what management at Certainteed believed to be true and not true, or is this just speculation on your part?

A. Speculation on my part.

MR. COHEN: Okay, now, I'll move to strike it.

MR. BRUCH: Then you shouldn't ask those type of questions. You're asking for speculation.

MR. COHEN: No, not necessarily. It's when it's offered gratuitously that I object.

Leon Horowitz - Cross

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MR. GALLO: Also ask whether he's
speculating as to what others may have done.

MR. COHEN: Well, that, that he can
testify to from his own knowledge.

THE WITNESS: I cannot testify to
what everybody did and everybody in the plant
did at all.

MR. COHEN: Right.

THE WITNESS: I cannot do that.

BY MR. COHEN:

Q. My question to you, Mr. Horowitz, is, while
you were employed by Certainteed, were you aware that
any one at a management level, knowing what was imparted
to them by you, did they take any steps that you are
aware of to tell Certainteed employees that they may
have a health risk of cancer and mesothelioma, because
of their asbestos exposure?

MR. BRUCH: Objection.

MR. PAUL: Note my continuing
objection.

THE WITNESS: They may or may not,
but I was not aware of it. They did not give
me that information, that they did or did not.

MR. PAUL: I want to note my --

Leon Horowitz - Cross

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MR. BRUCH: Go ahead.

MR. PAUL: I want to note my continuing objection to this line of testimony in the case arising out of the Certainteed plant, which we represent the Plaintiff.

BY MR. COHEN:

Q. Now, at any time while -- while you were working for Keasbey and Mattison, I believe you testified that you would have occasion to see raw asbestos coming into the Keasbey and Mattison plant; is that correct?

A. That is correct.

Q. Okay.

And, that was contained in what sort of wrapping?

A. Either paper bagging or burlap, mostly paper.

Q. And, at any time while you were at Keasbey and Mattison, did you ever see any sort of label on the bags or any sort of literature contained along with the raw asbestos that suggested to those that were handling the product that there might be a health hazard associated with their handling of the asbestos?

MR. GUSKY: Objection, asked and answered.

THE WITNESS: None that I remember.

BY MR. COHEN:

Q. Now, while you were employed by Certainteed Corporation, did you have occasion to see raw asbestos come in to that particular plant?

A. The Certainteed plants?

Q. Yes.

A. Yes.

Q. Again, did you ever see any specific notice or warning, whether it was affixed to the packaging of the raw asbestos or in any other way, that suggested a risk of cancer or mesothelioma to persons at Certainteed handling those raw asbestos bags?

A. I did not.

Q. Can you tell me whether Certainteed Corporation had a medical director at any time that you were employed by it?

A. None that I know of.

Q. Do you know whether Certainteed utilized any physicians at its facility at Ambler on a fee for services basis?

A. I don't recall any names.

Q. Do you recall whether they used physicians, even though you may not recall their names?

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A. I don't recall any contact with them.

Q. Now, with regard to the exhibits that were reviewed yesterday, I'd like to, if I may, direct your attention --

MR. BRUCH: Mr. Cohen, if I may interrupt --

MR. COHEN: Certainly, do you want to go off the record?

MR. BRUCH: No, I think the witness was confused by your last question. He's previously testified as to Dr. Donald, you may, who was fee for services for Certainteed. I think he didn't understand your question.

THE WITNESS: Well, I just didn't remember.

MR. COHEN: Whether he understood it or not, or did not recall it at that time or for whatever reason did not mention it, we can leave open for speculation, but now that the --

MR. GALLO: We're not here to speculate. Excuse me, go ahead.

MR. COHEN: Now that the matter has been brought up, let me ask --

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BY MR. COHEN:

Q. Mr. Horowitz, do you recall the name of any physician who may have been utilized by Certainteed Corporation on a fee for services basis now that Counsel has brought that matter up?

A. Well, as I testified before, I knew of the name, Donald. I cannot recall whether it was with Keasbey and Mattison or with Certainteed.

Q. Okay.

A. But, the name, Donald, is definitely clear in my mind.

Q. Can you -- before we get to the documents, let me just ask, can you tell me, based on your work experience at Keasbey-Mattison, which of the operating plants did you consider to be the dustiest?

A. Dustiest is a subjective thing, and it's a subjective analysis. I would say, plant 4, which created -- which produced insulating -- pipe insulating material.

Q. So, it would have been an asbestos cement pipe facility; am I correct or not?

A. No, that is not asbestos cement pipe facility.

Q. I'm sorry?

A. That is not an asbestos cement pipe facility.

1
2 Q. Okay.

3 It was a facility that produced other
4 types of asbestos insulation?

5 A. Asbestos cement pipe is not an insulation
6 material.

7 Q. I understand that.

8 Let me go back again, what function
9 was being performed at that particular plant?

10 MR. BRUCH: What plant are you
11 referring to?

12 MR. COHEN: Number 4, I believe.

13 THE WITNESS: The dustiest plant
14 that I'm referring to was that part of
15 plant 4, which I considered a plant which
16 produced more than one product.

17 BY MR. COHEN:

18 Q. What products were produced?

19 A. The product that I considered the dustiest was
20 the manufacture of a magnesium calcium silicate with
21 asbestos fibers, insulation cover for pipe.

22 Q. Now, if I can ask you, Mr. Horowitz, could you
23 take a look at the Exhibits which you brought with
24 you yesterday, and I'd like to refer you specifically
25 to Horowitz Exhibit #1, and if you would, you'll note that

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it has a year of 1956, and a question mark on there, at least my copy of that exhibit does.

A. I'm not sure I have it. Yes, I have it.

Q. Can you tell me, is that your handwriting?

A. Ah --

Q. The 1956 with the question mark.

A. The 1956 question mark is my handwriting.

Q. Okay.

And, can you tell me why that year was put in there by you?

A. There was no year written on it, and I wondered to myself when I reviewed this, when it was issued. It was obviously prior to my time, because I was not aware of this, of this proposed study.

Q. But, can you tell me how it was that you settled on the year 1956, as opposed to 1953 or 1942 or --

A. I don't know. I don't know. I had a question mark.

Q. Now, did you read this document when you first arrived at Keasbey-Mattison?

A. I believe I found it there or I got it from somebody at the Asbestos Textile Institute.

Q. Okay.

Now, I would like to --

A. And I did read it, yes.

Q. Okay.

I'd like to refer you to portions of the first paragraph which, in fact, let me just read the first paragraph, it says, the rapidly increasing evidence of cancer of the lung --

A. Incidence.

Q. Incidence of cancer of the lung has become a matter of concern to investigators in all branches of health, as well as to the general public. Although it would appear to be inevitable that some cases would develop in any group of workers, its occurrence in persons who also had asbestosis has been specifically noted by a number of authors over the past twenty years, thereafter, it cites in parentheses, the names, Lynch and Smith, Angrest, Dismules, et al, Cartier, Groin, Merriweather, Kenneway and Kenneway and Doll and others, end parens. Do you -- have I read that correctly?

A. Yes, you have.

Q. Do you know --

MR. GALLO: At this point, let me note my objection to your reading that portion

and your emphasizing certain words.

MR. PAUL: Mr. Gallo --

MR. COHEN: If I may -- I'm glad that you're noting that objection, but since I learned the practice from you yesterday, Mr. Gallo --

MR. GALLO: No speech is necessary, just note my objection.

MR. COHEN: Okay, well --

MR. GALLO: Continue with your question.

MR. PAUL: I join in Mr. Cohen's objection. Mr. Gallo taught us all how to do that yesterday.

MR. GALLO: So, I had the witness read portions. I did not read them myself.

MR. COHEN: Well, it doesn't matter whether the witness reads them under the rules or whether I do.

BY MR. COHEN:

Q. Have I read the -- have I read that correctly?

A. The words were correct, yeah.

Q. Can you tell me, to your knowledge, as of 1960, or any time while you were employed by Keasbey and

1 Mattison, do you know who Lynch and Smith were?

3 Well, let me just ask, I'm sorry --

4 A. I know of a Lynch --

5 Q. -- let me strike --

6 A. -- who was in Public Health Service, but I
7 doubt if it was he.

8 Q. Let me withdraw that question and ask you,
9 can you tell me whether you know who any of the people
10 in the parenthesis, that are enclosed in the parenthesis
11 were as of 19 -- as of any time that you were employed
12 by Keasbey and Mattison?

13 A. The name Cartier and the name Doll would come
14 across the literature while I was employed with
15 Keasbey-Mattison and since then.

16 Q. And, who was Cartier, and who was Doll, as you
17 understood them, when you first saw their names in
18 the literature?

19 A. Cartier, I believe, was from Canada, and Doll
20 from England.

21 Q. Okay.

22 And, do you know what these
23 individuals did in terms of their profession or
24 business?

25 A. I know Doll worked in the area of respiratory

1 disease. I'm not sure of what Cartier did.

2 Q. Do you know whether Cartier or Doll were
3 physicians?
4

5 A. I'm not sure. They might be researchers.

6 Q. Okay.

7 In -- and other than those two
8 people, you don't know the names of any of
9 the others?

10 A. I don't know the names of any of the others.

11 Q. Okay.

12 Now, then as we discussed yesterday,
13 Heuper of the National Cancer Institute in U.S. Public
14 Health Service, has stated that cases of lung cancer
15 superimposed upon asbestosis now number about a
16 hundred. Like many of the above authors, Heuper
17 refers to "asbestosis cancer" of the lung, and claims
18 a definite relationship between the two conditions.
19 Do you -- and I believe you stated yesterday your
20 knowledge of who Heuper was, am I correct?

21 A. I know the name, and I've read it, some articles
22 by him.

23 Q. Did you consider at the time you became aware
24 of the name, Cartier and Doll, did you, in your
25 experience, consider them to be individuals who were

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knowledgeable in the area of pulmonary disease?

A. Yes.

Q. Now, the same question with regard to Heuper, did you consider Heuper to be knowledgeable in the area of respiratory disease?

A. Yes.

Q. And, do you know whether Heuper was a physician?

A. I thought he was.

Q. Okay.

And, would you suggest or would you state that this information as we've just discussed it, was either -- was in contrast -- let me strike the whole question.

In your opinion, was the information that we've just discussed in agreement with the information Dr. Knox imparted to you, or was it different than what Dr. Knox was saying to you, during your September meeting, September, 1960 meeting?

A. More in agreement than not.

Q. Now, at the -- at -- looking at this particular document again it states that certain individuals have noted the relationship of cancer and asbestosis over the past twenty years. Were you aware, prior to reviewing this document, that there was scientific or

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medical literature twenty years prior to this, that suggested a relationship between asbestosis and cancer?

A. I've testified that I was not aware of that at all before 1960.

Q. Okay.

Do you know -- but, how did you first become aware of that fact, is my question?

A. Reading articles like this.

Q. Do you recall, specifically, whether you learned it from reading this particular article or some other articles?

A. I can't recall specifically which article was the first article I read.

Q. Okay.

Now, having been apprised of the cancer and mesothelioma relationship, or the belief that there may be a relationship by Dr. Knox, having read either this article or other articles which were in agreement with Dr. Knox's statement to you, can you tell me, did you develop in 1960 or 19 -- through 1962 while you were employed by Keasbey and Mattison any belief that there might in fact be a valid basis for the position that a person could contract

cancer because of asbestos exposure?

MR. GALLO: Objection, calls for a medical opinion, calls for other opinion and it's compound in form.

MR. BRUCH: I just object for any questions that have the word opinion in the question and belief.

MR. COHEN: Well, I think the witness can state his opinion in the position he occupied as an engineer for -- it's still picking up, as an engineer for Keasbey and Mattison, since one of his responsibilities, okay, well, I'm just stating my position for the record.

BY MR. COHEN:

Q. Can you --

A. What are you looking for?

MR. COHEN: Okay, let's go off the video for a second.

MR. STEWART: We're now going off the record. The time is 11:42.

MR. PAUL: I want to -- since we're off the video, I want to make it clear that I'm going to have some additional questions unless

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2 Mr. Cohen covers the questions that I have
3 resulting from the fact that there were documents
4 which were, in fact, part of the deposition of
5 this witness in 1980, which all of you who were
6 represented got, but which the Plaintiffs who
7 were noticed of this deposition did not get.

8 MR. GALLO: You don't know that.

9 MR. PAUL: Which we just found out,
10 we just got this morning. The document that
11 was introduced yesterday, Exhibit 28,
12 referred to a report, Exhibit 29, which we saw
13 yesterday and which Mr. Shein barely had a chance
14 to look at, but then I discovered this morning
15 that there were yet others. And I wish to object
16 to that on my -- for our Plaintiff, to not having
17 been supplied with this prior to that time.

18 MR. CREEDON: In light of that, I have
19 a statement. I'll have you know that I
20 received a copy of the deposition, and I had
21 no documents whatsoever attached. So, that to
22 be characterized as being put in a position of
23 having some documents which were not available to
24 Mr. Paul or any other Plaintiffs' counsel, I
25 object to that statement.

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2 And number two, any questioning
3 with regard to the documents which were turned
4 over this morning, if I can just have a
5 continuing objection on the ground it's beyond
6 the scope of the direct, so I don't interrupt,
7 when you get to that point.

8 MR. COLEMAN: I agree, join with
9 Mr. Creedon on behalf of Celotex.

10 MS. GIBSON: I would also like to
11 say, it's my understanding that because certain
12 parties weren't represented at the other
13 deposition that is why we're taking a new
14 deposition.

15 MR. PAUL: I'll absolutely concede,
16 Ms. Gibson, that it is because of our objection
17 to the previous deposition and to us not having
18 been present at it, that this deposition was
19 taken. However, as a result of request made of
20 the witness at that deposition, these are the
21 documents, which were produced by you to other
22 counsel, and were not produced to us.

23 MS. GIBSON: I'm not aware of
24 what request you've made to either the witness
25 or Mr. Gallo for documents.

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2 MR. PAUL: No, he was requested
3 in the original deposition, it was represented
4 to us, that this deposition and the attached
5 exhibits were the deposition. Now, perhaps,
6 it was represented that was all Mr. Gallo
7 intended to use, but it is also clear that that
8 is not, in fact, the total deposition. Exhibits
9 are not the total deposition, because these
10 other documents were produced later. He may
11 not have intended to use them, I absolutely
12 wish to make it clear that I'm not saying that
13 he misrepresented to us that he was going to
14 use them. But, they were there, and they were
15 not provided to us. I find that objectionable.

16 MR. GALLO: The deposition speaks for
17 itself, what transpired before, I just
18 incorporate what I said to Mr. Cohen at the
19 beginning in response to you, Mr. Paul.

20 MR. PAUL: Sure. I agree that you
21 -- that you told us you were only going to
22 use what you used in that deposition. And that's
23 what we had. I still, however, object to the
24 failure to provide us with the other documents.

25 MR. GALLO: I don't think I told you

that either, but let's go.

MR. PAUL: That's all I wish to say for the record at this point.

MR. STEWART: We're now back on the record. The time is 11:47.

BY MR. COHEN:

Q. Mr. Horowitz, my -- I believe my last question to you prior to going off the record was -- let me ask, I'm sorry, I thought I was -- I remembered the question, let me ask that it be repeated.

(Whereupon the court reporter read back the previous question by Mr. Cohen to the witness.)

MR. MASON: I object.

MR. GALLO: Note my prior objections.

MR. COHEN: All right, let me ask the question again, we we can edit this portion of the tape.

BY MR. COHEN:

Q. Mr. Horowitz, having had the discussion with Dr. Knox that we've gone over before, and having read this particular article, Horowitz Exhibit #1, and other articles with regard to mesothelioma and

1
2 cancer, did you form any belief with regard to the
3 validity of that position, that a person might
4 develop cancer or mesothelioma because of asbestos
5 exposure?

6 MR. GALLO: Objection.

7 MR. MENDELOW: Objection.

8 MR. GALLO: Same basis as before,
9 and also to the form.

10 THE WITNESS: In spite of the alleged
11 respectability of the persons who wrote these
12 and gave this information, it was new
13 information, and it was the practice of
14 industrial hygienists, at least my own practice,
15 to wait until the industrial hygiene community
16 responded to this kind of information, but it
17 surely set my mind to thinking that we do have a
18 problem greater than I thought we had.

19 BY MR. COHEN:

20 Q. Well, when you say it was new information, you
21 mean it was new to you in 1960?

22 A. That's right. You asked my response, so it was
23 new information to me.

24 Q. Okay.

25 But, that does not -- but, you're not

1
2 suggesting that it was new to the scientific and
3 medical community, are you?

4 A. Obviously, since the scientific community --
5 I don't want to be argumentative, but since they did
6 not react to it, who was I to react to it.

7 MR. GALLO: Objection.

8 BY MR. COHEN:

9 Q. Now, I believe in your prior deposition on page
10 thirty-two, if I can ask you maybe to turn to that --

11 A. Exhibit 32?

12 Q. Page thirty-two of your prior exhibit.

13 A. Oh, the deposition?

14 Q. Yeah, it's being handed to you.

15 A. Oh, thank you. Mine opens another way.

16 Yes.

17 Q. There's a discussion of why the year 1956 appears
18 in -- in handwriting, and you stated at lines 11
19 through 15 of that deposition "I was curious to know
20 when the first knowledge of the hazard due to asbestos
21 was available, and in the report, they mention 1956. I
22 believe I put it there, because I didn't know the date
23 of this memorandum, so I just put it there for my own
24 information.

25 Did I correctly read your --

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A. Yes, apparently, now that I'm reminded, that's probably why I did put it there.

Q. Well, let me ask you, is it -- was it your testimony in June of 1980 that the first knowledge of the hazards due to asbestos was available in 1956?

A. I was referring to the second page of that exhibit, where they reviewed the results of preliminary survey, and they suggest -- they stated, during the weeks of April 23rd and May 7th, 1956 --

THE COURT REPORTER: May 23rd and --

THE WITNESS: And May -- August --
April 23rd and May 7th, 1956, visits were made to seven member plants. That's the only reference --

MR. COHEN: Okay --

BY MR. COHEN:

Q. Okay, so, and I just want to clarify that with your testimony in June.

A. Yeah.

Q. The reason you put 1956 was because of the mention of the visitation to certain plants, as opposed to a statement that the first knowledge of the hazard due to asbestos was available in 1956.

A. Yes.

1
2 Q. Okay.

3 A. That's true.

4 Q. Now, turning to that paragraph on page two,
5 do you recall who the seven member plants of the
6 asbestos textile institute were that were examined?

7 A. Since this was a publication prior to my joining
8 the company, I have no knowledge of that.

9 Q. Did you acquire any knowledge or information
10 subsequent to your joining Keasbey and Mattison that
11 suggested who those plants -- member plants were?

12 A. I don't recall even being curious enough to
13 find out.

14 Q. Now, with regard to Horowitz Exhibit # -- I
15 believe it's 2, it is entitled Proposed Industrial
16 Hygiene Program for all K&M plants. The copy I have
17 didn't include the number. Am I correct on two?

18 MS. GIBSON: That's right.

19 BY MR. COHEN:

20 Q. Do you have that?

21 A. I'm sure I have it. Now, whether I can find
22 it. I have a copy of it in front of me.

23 Q. Now, under 3B, it talks about replacing obsolete
24 and inadequate equipment.

25 A. Yes.

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2 Q. Can you tell me where, in your opinion, at
3 which facilities at Ambler did there exist obsolete or
4 inadequate equipment in terms of production of asbestos
5 containing products?

6 A. Primarily, in plant 4.

7 Q. And, that was the plant which produced asbestos
8 insulation material; is that correct?

9 A. Correct.

10 Q. And, can you tell me did the obsolescence or
11 inadequacy of the equipment result in the generation
12 of asbestos dust beyond those which you thought were
13 permissible under existing standards for the development
14 of asbestosis?

15 A. A corollary to that would be if it were better,
16 it would improve the dust conditions.

17 Q. Now, my question to you was, did the obsolescence
18 of any machinery, or the inadequacy of any machinery
19 being used in plant #4 result in the creation of dust
20 which exceeded what you believed to be the proper
21 standard or -- not the word standard, the proper
22 guideline at that time, with regard to the development
23 of asbestosis?

24 A. I'm trying to say that the question is not
25 stated in such a way that I can answer yes or no. It is

1 not the control equipment that produces the dust. It's
2 the machine that does the process that produces the
3 dust. So, if you ask me whether I believed that the
4 obsolescence of the dust control did not
5 control the dust that was produced at that machine,
6 I could answer the question.
7

8 Q. Okay.

9 And, what would your answer be to
10 that question?

11 A. It obviously -- obviously was obsolete and
12 inadequate to control the dust at that operation.

13 Q. Now, with regard to Horowitz Exhibit #3, --

14 A. I don't --

15 Q. -- it's entitled Notes on Papers at 13th
16 International Congress on Occupational Health.

17 Well, I'm going to go through them seriotum.

18 A. I think I'm getting there. I believe I have
19 number 3, yes.

20 Q. Okay.

21 Now, I'd like to refer you to the
22 second paragraph under number 8, where it states
23 "about a hundred cases of pleura calcification were
24 found in patients with no history of pleural disease, and
25 no occupational exposure to dust.

Do you see that particular paragraph?

A. Yes.

Q. Can you tell me --

A. Yes.

Q. Okay.

Can you tell me, did you read this particular document, first of all?

A. Did I read it, after I wrote it?

Q. I'm sorry, strike that.

Can you tell me from what -- what was the basis of the information that you had that caused you to write this document, was it the presentation of the papers on the International Congress solely?

A. Yes, yes.

Q. Okay.

A. It was reporting to my superior about the meeting, relating to the materials we were interested -- stuff we were interested in.

Q. Okay.

And, when did this Congress occur, the 13th International Congress, do you recall the year?

A. I don't recall exactly. I think it was '60,

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'61, something like that.

Q. You were still employed then by Keasbey-Mattison?

A. I was still employed by Keasbey and Mattison.

Q. Was this the first time that you were advised that there were reported incidents of asbestos related disease in persons who were not otherwise occupationally exposed to asbestos?

A. The information about South Africa was the first time, yes. They were not persons, so much as also animals.

Q. Well, did that, based on your experience as an industrial hygienist and dust control engineer, did that suggest anything to you with regard to the potential of asbestos to cause disease in the human body?

MR. GALLO: Objection.

MR. BRUCH: Objection.

MR. GALLO: I don't know that we still have a continuing objection.

MR. COHEN: You do.

MR. GALLO: Concerning non-occupational exposure.

MR. COHEN: You do.

MR. GALLO: Okay.

MR. COHEN: Because, I think it's all relevant to his knowledge as to asbestos disease, generally, in his capacity for Keasbey and Mattison.

MR. BRUCH: I have that same objection.

THE WITNESS: It brought up the potential for that problem, yes.

MR. COHEN: Okay.

BY MR. COHEN:

Q. At that time -- or let me ask, at any time subsequent to reading or preparing, rather, this particular document, were you made aware of any other studies or scientific or medical writings concerning the development of asbestosis or cancer or mesothelioma in persons who were not occupationally exposed to asbestos, but lived in and around plants where asbestos was used?

A. What time period are you talking about?

Q. At any time subsequent to your preparation of this memo, while you were employed by either Keasbey and Mattison, or Certainteed Corporation.

A. There were papers that referred to that, yes.

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Q. Okay.

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Can you recall, specifically, the papers that you're talking about?

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A. I believe, but I'm not sure that it was the conference in 1964, some papers were presented on that subject.

8

Q. Okay.

9

10

Would that be the Selikoff conference that you're speaking of at the Waldorf?

11

12

A. Well, you're giving him a lot of credit. It wasn't named the Selikoff conference, but --

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Q. That's my term.

14

A. That's your term, yeah --

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16

Q. The conference that occurred where Dr. Selikoff was the speaker?

17

A. Academy of Science.

18

Q. That's correct.

19

20

So, you found that information, similar types of information at that conference?

21

A. More information on the same subject, right.

22

23

MR. BRUCH: Well, I believe the answer was, he believes that he found it there.

24

MR. COHEN: Well, let me ask --

25

MR. BRUCH: -- I think the witness

should testify as to what he knows and not
what he believes.

BY MR. COHEN:

Q. Is it your recollection that you received this
type of information at that conference?

A. There were probably two hundred papers given. And
I'm almost sure that a few of the papers discussed
that, one or two. I don't know.

Q. Now, did you bring to the attention of the
management of Certainteed Corporation or Keasbey and
Mattison Corporation, the fact that people who were
not occupationally exposed to asbestos were contracting
diseases of the body?

MR. BRUCH: Objection.

THE WITNESS: I brought to them
notes of my meetings, and this was one of them.
And it -- the inference that you asked whether
I got from this, they must have gotten from
that.

MR. PAUL: Note my continuing
objection --

MR. BRUCH: Move to strike the
answer.

MR. PAUL: -- to the use of this

1 particular line of testimony, anything having
2 to do with these types of questions in the
3 particular case in which I represent the
4 Plaintiff.
5

6 MR. BRUCH: My objection goes to
7 the basis that this witness cannot testify
8 as to what inferences other people may have
9 received or perceived, cannot testify as to
10 the mental thinking of other people.

11 BY MR. COHEN:

12 Q. Well, Mr. Horowitz, did you provide the
13 management of Certainteed Corporation with the
14 information you had learned regarding non-occupational
15 disease development, as a result of your attending
16 the Academy of Science meeting in 1964?

17 A. I can't be specific about that subject, but I
18 reported on the meeting to -- to my supervisor, every-
19 thing that I thought was pertinent to our province.

20 Q. Okay.

21 Now, I'd like to refer you to para-
22 graph 9 of that same document, the second portion,
23 it states "all types of asbestos, in parens chrysotile,
24 crocidilite, amosite --

25 THE COURT REPORTER: In parens?

MR. COHEN: In parens. Okay, do

you want to --

BY MR. COHEN:

Q. It's all types of asbestos, parenthesis
chrysotile, crocidilite, amosite, end parenthesis,
mined or produced in South Africa --

A. Processed.

Q. Processed, I'm sorry, in South Africa, can
produce asbestosis. Asbestosis has been found in
people not subjected to industrial exposures who were
born in the area of the mines or those who trans-
ported it, and even two nurses who were never -- it
looks like one, never --

A. That's a misprint.

Q. Okay, never near the mines, end quote.

Is this the first time that you were
made aware at the attendance of this conference that
all types of asbestos can produce asbestosis?

A. Yes. Did you say the first time?

Q. Yes.

A. I can't recall whether this is the first time.
I believe my -- I know that my understanding of
asbestos was asbestos period.

Q. And, to your knowledge, was it only asbestos

1 that was mined in South Africa that could cause
2 asbestosis?
3

4 A. Asbestos is asbestos.

5 Q. So, your answer would be the same whether the
6 asbestos was mined in South Africa or the Dominion
7 of Canada?

8 A. Asbestos is asbestos.

9 Q. Now, I would like you to look at Horowitz
10 Exhibit #5, which is a meeting of the Asbestos
11 Textile Institute dated September 8th and 9th, which
12 was prepared on September 14th.

13 A. I have a 4 and then I skip to a 6. I think
14 the meetings were separated.

15 Do you have the 5 there?

16 Thank you. Yes, go ahead.

17 Q. You'll note it shows a Mullinson appearing
18 for the English Asbestos Company.

19 A. Yes.

20 Q. Can you tell me what knowledge you have of what
21 the English Asbestos Company is or was?

22 A. I don't remember it.

23 Q. Now, looking at paragraph 3, under the topic,
24 discussion, it states, and I'm looking at the last

25 two sentences, "it was agreed by all members present that

1 lower dust counts mean lower occupation disease claims."

2 A. Yes.

3 Q. Was there any discussion at that particular
4 meeting that suggested that lower dust counts might
5 mean that less employees would get sick, as opposed
6 to less employees would sue or file compensation
7 claims?
8

9 A. The -- this statement connotes what you're
10 saying. It says that there wouldn't be claims,
11 because there would be less exposure.

12 Q. But, was there any discussion that less
13 exposure would also be better for the health of
14 the employees, as opposed to the fact that it was
15 going to end up in less lawsuits against the
16 companies?

17 MR. BRUCH: Object to that.

18 MR. COHEN: I'm certain you would.

19 MR. GALLO: Objection to the form.

20 I think it's unclear.

21 THE WITNESS: The --

22 MR. COHEN: Okay, let me rephrase
23 the question.

24 BY MR. COHEN:

25 Q. Was there any discussion at that particular

1
2 ATI meeting that it was better for the health of
3 the employees to reduce dust counts, as opposed to it
4 being better for the Corporate structure, since it
5 would not be sued as often?

6 MR. BRUCH: Objection.

7 THE WITNESS: Shall I answer that?

8 MR. GALLO: Yeah.

9 THE WITNESS: In a meeting of
10 industrial representatives, the discussion and
11 the impetus behind doing something is very often
12 money, and therefore, the discussion and the
13 words used have to do with money. But, it's
14 obvious that if you reduce the dust exposure
15 from five to two and a half, that you are
16 protecting the health of the worker more.

17 BY MR. COHEN:

18 Q. But, it --

19 A. That's an obvious answer, but not verbalized
20 in that way.

21 Q. But, was it discussed in those terms, was it
22 discussed in terms of a concern for the welfare of
23 the employee or a concern for greater distribution
24 of profits to shareholders?

25 MR. GALLO: Objection --

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MS. GIBSON: Objection.

MR. CREEDON: Objection.

MR. GALLO: -- argumentative, asked
and answered.

THE WITNESS: As an industrial
hygiene person, no matter whom I work for,
it is the health of the worker we're discussing.
If they chose and if I chose to make that
statement, it was to give impetus to the company
that it was to their benefit money-wise to
also do whatever they can to improve the health
of the worker, they're correlated statements.

MR. GALLO: I withdraw the objection.

BY MR. COHEN:

Q. So, if -- if you thought it would be best to
express it to the corporation in terms of dollars and
cents to the corporation that you found they would
understand?

A. Very -- very often you get better reaction.

Q. Okay.

MR. GALLO: Object and move to
strike.

BY MR. COHEN:

Q. Now, can I refer you now to Horowitz Exhibit #7.

THE WITNESS: Here is your 5.

Do you have a 7 there, Jim?

Thank you.

BY MR. COHEN:

Q. Now, can you tell me who attended the meeting of the IHF in October of 1960, other than obviously you?

A. Mr. Childs obviously wrote this, and I attended too.

Q. Okay.

Can you tell me whether any -- any other asbestos manufacturers attended that meeting besides Keasbey and Mattison that you can recall?

A. I can't recall specifically.

Q. Do you know whether any of the members that attended, even though you might not recall their names were miners of asbestos fiber?

A. That, definitely, I cannot recall.

Q. Now, I'd like to refer you to paragraph one, subparagraph d, first page, which is underlined. And it states, "Panel agreed that every effort should be taken to keep a worker on the job, control dust hazards. This can and must be done resulting in decreased claims."

Have I correctly quoted that?

A. Yes, you have.

Q. And, that was -- do you know why that particular sub-paragraph is underlined as opposed to any other paragraph?

MR. GALLO: Objection, he's not the author of this document.

MR. COHEN: He still can have knowledge, even though he's not the author.

MR. GALLO: Objection, nevertheless. You're asking him to interpret the intentions of the author.

MR. COHEN: We don't know if the author did the underlining either.

MR. GALLO: That's right, I don't know that.

MR. COHEN: Okay.

BY MR. COHEN:

Q. Do you have any knowledge as to why that particular paragraph is underlined and others are not?

A. I don't have any particular knowledge. I can give an opinion.

Q. Okay. So, if you don't have any knowledge, then

1

2 I'm not going to explore that.

3

4 Okay, can you tell me, again, whether
5 -- was there any agreement by the panel that reducing
6 dust levels or controlling dust hazards would be
7 beneficial to the health of the employee, was it
8 discussed in those specific terms at that meeting?

9

10 A. That's the whole premise, the whole premise
11 of the discussion is to protect the health of
12 the employee.

13

14 Q. Well, would you show me where that is -- where
15 that's mentioned as opposed to keeping an employee on
16 the job as much as possible, so it's profitable for
17 the corporation, or that it would result in decreasing
18 claims against the corporation. You see, that it says
19 clearly. Can you show me where well in the memo, it
20 discusses specifically, since it is so obvious that
21 that is the reason that all these conferences were
22 occurring, because of concern for the health of the
23 employee?

24

25 MR. BRUCH: Objection. I object to
26 counsel testifying and interpretating the
27 document, which speaks for itself.

28

29 MR. GALLO: Also objection to the
30 argumentative nature and compound nature of

31

the question.

MR. BRUCH: I think --

BY MR. COHEN:

Q. Mr. Horowitz --

MR. GALLO: He has already answered
the question.

MR. COHEN: Well, he's going to
ask -- he's going to answer the next question
that I ask him, too.

BY MR. COHEN:

Q. Can you tell me, specifically, where it says
that the health and well being of the employee is the
reason why dust should be controlled, as opposed to
keeping the employee on the job as long as possible, and
reducing claims whether they're lawsuits or compensation
against the corporation?

MR. GALLO: Objection to the form.

MR. BRUCH: Same objection.

MR. CREEDON: Objection.

THE WITNESS: Do you want me to answer
that or not?

MR. COHEN: I certainly do.

THE WITNESS: It is my understanding
on a statement like this, and this is all I can

1 give it to you, because I did not write this,
2 when a statement like that is made, and it is
3 my understanding as an industrial hygiene
4 engineer that the company must make every
5 effort to improve the dust conditions in such
6 a way that it would be safe and healthy for
7 the worker, and that there would be no need
8 to change the job. It had nothing to
9 do with saving money. If saving money -- well,
10 as an aside, if saving money had to do, sometimes
11 it costs more to remove a person from a job.
12 So, I don't know that that is -- that's a
13 conclusion you or somebody else has made, that
14 moving from a job is saving money. I don't --
15 I don't see any where where it says that we will
16 save money by doing that.

17
18 BY MR. COHEN:

19 Q. Well, if you're not sued because of it, doesn't
20 that save you money?

21 MR. BRUCH: Objection.

22 MS. GIBSON: Objection.

23 MR. GALLO: Objection.

24 THE WITNESS: They don't say anything
25 like that.

2 BY MR. COHEN:

3 Q. It says, must be done resulting in decreased
4 claims.

5 A. Again, this is a kind of a statement that gives
6 impetus to --

7 Q. So, what you're saying is that money is a
8 factor?

9 MR. GALLO: Objection.

10 THE WITNESS: Money is always a
11 factor.

12 MR. GALLO: You're arguing with the
13 witness now, and I object to this whole line of
14 questioning on a further ground that you've
15 misled the Jury and the witness by implying
16 that there is no such statement directed to
17 the concern for worker health in this document,
18 when --

19 MR. COHEN: Well --

20 MR. GALLO: -- this is clearly
21 an underlined statement on page --

22 MR. COHEN: -- excuse me --

23 MR. GALLO: -- I'm not finished.

24 MR. COHEN: No, well, you're
25 finished, because I'm asking you can bring that,

1 if there is such a statement, and let me
2 finish with the document before you object to
3 it, if you're going to refer to somewhere
4 other than where I'm at now. Okay?

5
6 MR. GALLO: Well, I think that you
7 should give the witness a chance to read the
8 entire document, including page two, paragraph
9 3A.

10 MR. COHEN: That's exactly what I've
11 got underlined to go into next, okay, so maybe
12 I can mute your objection.

13 BY MR. COHEN:

14 Q. Now, --

15 MR. GALLO: My other objection still
16 stands as to the form of the question.

17 MR. COHEN: I understand that.

18 BY MR. COHEN:

19 Q. Now, let's look at paragraph 3A, Mr. Childs is
20 stating the real issue, and underlines the word is
21 underlined in my copy of the exhibit, which industry
22 and industrial relations must face and accept is the
23 concern of the injured employee, and his family.
24 Industry, in general, does not take this approach.
25 It does not investigate fully and promptly, and it must

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accept this responsibility.

Have I correctly read that portion?

A. Yes, you have, part of the paragraph.

Q. To the extent that I have read it?

A. That's right.

Q. Is there anything that you would like me to read beyond that so the Jury does not believe that there is something that I'm intentionally omitting that might be improper?

MR. GALLO: I object to that question.

MR. BRUCH: I don't believe that's a question.

MR. COHEN: Is there -- okay.

BY MR. COHEN:

Q. Have I correctly read what I've -- what I've just stated?

A. Yes, you have.

Q. Would you agree or disagree with Mr. Childs writing in this particular paragraph with regard to the attitude of industry --

MR. CREEDON: Objection.

MR. GALLO: Objection, you're calling for his opinion.

MR. COHEN: That's right, because he

was an individual that had a certain responsibility and performed certain work, for both Keasbey and Mattison and Certainteed Corporation. I think it bears directly.

MR. GALLO: Objection, beyond the scope.

MR. BRUCH: Same objection.

THE WITNESS: Do I answer the question?

MR. COHEN: Yes.

THE WITNESS: What is the question?

BY MR. COHEN:

Q. The question is, did you share the opinion expressed in this document, as we've just discussed it?

A. This is -- was a public or industrial relations type of a report of industrial relations type of a meeting, and it does not relate, really, to my function as an industrial hygiene engineer whose primary function is the protection and health of the worker.

Q. Well, how about when you were hired by Certainteed Corporation, and you became an industrial hygienist and had that responsibility?

A. The responsibility was still limited to the

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protection and health of the worker.

Q. But, what I'm stating is, with regard to the attitude that was expressed by Mr. Childs, did you agree or disagree with that at the time you were working for Certainteed Corporation?

MR. BRUCH: I think that's already been answered.

MR. CREEDON: Objection.

MR. COLEMAN: Objection.

THE WITNESS: I think it's a political type of question and an economic type of question.

MR. STEWART: Excuse me, gentlemen. This concludes tape number seven of the videotape. The time is 12:17.

This is the beginning of videotape number eight. The time is 12:28.

BY MR. COHEN:

Q. Okay, Mr. Horowitz, if you would, I would like you to take a look at Exhibit -- I'm sorry again, it's -- I think it's Horowitz 13.

A. I have that.

Q. Okay.

Am I correct that's dated June 12th,

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1961?

A. June 12th, 1961.

Q. Okay.

Refer you to the fourth paragraph of that report of the Asbestos Textile Institute Meeting, where it states, and I quote, "The British and South Africans have associated lung cancer with asbestosis since 1935. This relationship has been the subject of some discussion in the U.S. only in recent years with opinions pro and con, based on inconclusive data and statistics."

Have I read that correctly?

A. You read it correctly.

Q. Now, again, were you ever advised what it was in the British or South African experience that caused them, as far back as 1935 to associate lung cancer with asbestos exposure?

MR. GALLO: Objection to the form.

When you say, were you ever advised, if you're talking about post 1968, I object.

MR. COHEN: Okay.

MR. GALLO: Are you?

BY MR. COHEN:

Q. Were you ever?

1
2 A. I was advised that the medical programs for
3 the control of the health of the workers both in Africa
4 and in England were more intensive and more controlled
5 than in the United States, and as a result of that, were
6 able to gather statistics a little better.

7 Q. Okay.

8 Now, can I ask specifically who
9 advised you of that -- or those factors, and when?

10 A. I can't tell you who it was. I picked it
11 up in the literature or at a meeting or something
12 like that.

13 Q. Were you ever advised that there was any sharing
14 of information between any of the British medical and
15 scientific community and any companies who mined
16 asbestos?

17 MR. MASON: Objection.

18 THE WITNESS: Between the British
19 Companies and the mining companies, is that
20 it?

21 MR. COHEN: No --

22 THE WITNESS: Is that the question?

23 MR. COHEN: -- no, let me rephrase
24 the question.

25 THE WITNESS: Yeah.

1

2 BY MR. COHEN:

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3 Q. Were you ever advised that the British
4 experience, as we've just discussed it, was shared
5 between members of the British scientific and medical
6 community with other companies or corporations that
7 mined asbestos?

7

8 MR. MASON: Objection.

8

9 MS. GIBSON: Objection.

9

10 MR. GALLO: Objection.

10

11 MR. CREEDON: Objection.

11

12 THE WITNESS: I have no knowledge to
13 that effect.

13

14 BY MR. COHEN:

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15 Q. Now, I would like to refer you to page two of
16 that minute, again, we're still on Exhibit #13. And,
17 am I correct that Dr. Smith spoke at that particular
18 ATI meeting?

18

19 A. Not at that particular meeting, I don't believe.
20 He is not shown as being in attendance. I think
21 reference is made to a -- a discussion about meetings
22 that he had with other people, but I don't think he was
23 at that meeting. I'm not sure.

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24 Q. Okay.

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25 Let me ask you, did you ever speak with

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Dr. Smith, while you were employed by either K&M,
Keasbey and Mattison or Certainteed?

A. Briefly, yes.

Q. Okay.

And where and under what circumstances
did you speak with him?

A. At one of these meetings.

Q. And, what was the subject of your conversation
with regard to --

A. As a lay person, I -- medically, I was curious
to know whether the skill, skills of the physicians
in general were capable of diagnosing asbestosis.

Q. And, what did Dr. Smith tell you?

MR. CREEDON: Objection.

THE WITNESS: He said there were not
too many doctors who really can recognize
asbestosis at that time.

BY MR. COHEN:

Q. Did Dr. Smith have any discussion with you
about his own personal work for Johns-Manville
Corporation?

MR. CREEDON: Objection.

THE WITNESS: I didn't go into that
kind of discussion with him.

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2 BY MR. COHEN:

3 Q. Now, I would like to ask you to look at page
4 two, and I'm sorry again, my copy does not have the
5 exhibit number, it's dated September 12th, 1961, that
6 is the document. I don't know --

7 MS. GIBSON: 14, I think.

8 MR. COHEN: I'm sorry?

9 MS. GIBSON: 14, I think.

10 MR. COHEN: 14, okay.

11 THE WITNESS: I don't think I have it.

12 Do you have it, Jim? I really messed these
13 up, didn't I?

14 Okay.

15 BY MR. COHEN:

16 Q. Now, I would like you to look at page 2, the
17 last paragraph, which is numbered five. And, it says,
18 and I quote, "The asbestos industry would get the
19 maximum --

20 A. I don't have that same thing.

21 MS. GIBSON: He's not beginning at
22 the first sentence.

23 THE WITNESS: Page two?

24 MR. COHEN: Page two. I'm sorry,
25 paragraph five. I'm reading -- I'm sorry, I'm

reading from the middle of the paragraph.

THE WITNESS: Exhibit 14?

MR. COHEN: Right.

THE WITNESS: Are you reading from
the middle of the paragraph?

MR. COHEN: Yes.

THE WITNESS: Okay.

BY MR. COHEN:

Q. States "The asbestos industry would get the
maximum cooperation, which they would not enjoy with
the many State agencies."

Can you tell me, Mr. Horowitz, what
information or what knowledge did you have available
that would suggest that if the United States Public
Health Service were to conduct surveys of manufacturing
facilities of asbestos companies, that you would be
treated better than you would if State agencies did it?

MR. BRUCH: Objection.

THE WITNESS: It's your interpretation
about treatment, the question there referred to
the fact that no one State had the facilities to
do this type of study in a fair and unbiased
manner, as equal to the U.S. Public Health
Service. And that is why all -- eventually, all

in agreement that the best unbiased study would be done by the Public Health Service.

BY MR. COHEN:

Q. Well, it doesn't -- let me ask, what -- what does the U.S. Public Health Service have available to it, that for instance the Commonwealth of Pennsylvania did not have available to it, as of September of 1961, did they use the same equipment?

A. They had analytical equipment worth almost a hundred times what the Pennsylvania would have had.

Q. That may be insofar as quantity of equipment, but in other words --

A. As far as sophistication of the equipment.

MR. GALLO: Objection.

BY MR. COHEN:

Q. Is it your testimony that the regulating agencies in the Commonwealth of Pennsylvania would not be capable of going into an asbestos manufacturing plant and accurately monitoring or surveying the plant?

A. No, no.

Q. Okay.

A. The U.S. Public Health Service was a research type of organization, and none of the states had a research

1 type of organization for industrial hygiene.

2 Q. But, all you would be accumulating would be
3 empirical data, would it not -- would you not?
4

5 A. Right, and the States would not. They just
6 don't have the personnel or money to do that.

7 Q. Well, do you know that of your own knowledge?

8 A. I know that of my own knowledge, yes.

9 Q. Did you know that as of 1961 with regard to
10 the Commonwealth of Pennsylvania?

11 A. I knew that with regard to every State that I
12 knew of.

13 Q. Do you know it specifically, what information
14 did you have regarding the Commonwealth of Pennsylvania?

15 A. My contact with the industrial hygienists in
16 Pennsylvania. They were no different, in fact, perhaps
17 less capable than the -- than the Division of Industrial
18 Hygiene in New York, where I worked. And they were not
19 capable of doing this type of study.

20 Q. Well, the statement does not state that the Public
21 Health Service is better equipped to perform that
22 work, or that they might get better or more accurate
23 information, it is that you can get the maximum
24 cooperation. Now, I'd like to focus you in on the word,
25 cooperation, and ask you what the word meant as you

1 utilized it there?

3 MR. GALLO: Objection to the form.

4 THE WITNESS: Well, before I answer
5 that, they also say they have the money and
6 trained personnel to establish the truth concern-
7 ing asbestos and its relation to lung disease.

8 MR. COHEN: Right.

9 THE WITNESS: That is the emphasis of
10 it. The cooperation to go, first of all, not
11 every State had an industrial hygienist, so,
12 at that time.

13 BY MR. COHEN:

14 Q. Let me narrow my question to the Commonwealth
15 of Pennsylvania only.

16 A. Yes.

17 Q. Okay.

18 A. Right.

19 Q. Now, let me ask you again, what did you mean
20 when you said that the asbestos industry would get the
21 maximum cooperation from U.S. Public Health Service?

22 A. Well, you may mean to limit your question to
23 the State of Pennsylvania, but these industries
24 covered the whole country.

25 Q. Okay.

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2 A. And, they were not responding to only the
3 companies in Pennsylvania. The -- just -- there was
4 no even question that a State could do this type of
5 work. It's not a research -- they don't do research
6 work, at that time.

7 Q. But, do you state anywhere in that paragraph
8 that the Federal Government is better equipped or
9 better capable, or do you use the word, you would get
10 maximum cooperation, and I'm asking you, what does
11 the word cooperation mean?

12 MR. GALLO: Objection, he has
13 answered this at least twice. He's gone
14 over the same thing.

15 MR. BRUCH: Objection.

16 MR. GALLO: And he has answered by
17 referring you to other language there.

18 THE WITNESS: Did -- my understanding
19 of it is that the State would respond that
20 they can't do this.

21 MR. COHEN: Okay.

22 THE WITNESS: And, that's what they mean
23 by maximum cooperation.

24 BY MR. COHEN:

25 Q. Were you aware as of -- as of 1961 of the

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relationship between the asbestos miners and
manufacturers and the U.S. Public Health Service?

MR. MENDELOW: Objection.

MR. GALLO: Objection.

THE WITNESS: I know of no relation-
ship.

BY MR. COHEN:

Q. Did you know whether there were particular
groups who worked as lobbyists on behalf of the
asbestos industry with the U.S. Public Health
Service?

MR. GALLO: Objection.

MR. CREEDON: Objection.

THE WITNESS: I don't know what
that means.

I don't know what that means.

BY MR. COHEN:

Q. Do you know what a lobbyist does?

A. I know what a lobbyist does.

Q. Do you know whether there were individuals who
had lobbying functions on behalf of the asbestos
industry with the U.S. Public Health Service in
1961?

MR. GALLO: Objection --

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MR. CREEDON: Objection.

MR. GALLO: -- Objection, it's
beyond the scope and irrelevant.

THE WITNESS: You would have to
define and give me an example. I don't know
what that means. I think of lobbyists only
working in Washington or similar area. I
didn't -- can't see the U.S. Public Health
Service having an office in Quebec to lobby
the mines. I don't understand that.

BY MR. COHEN:

Q. Well, how about --

A. I don't understand the question.

Q. Okay.

The question is, do you know whether
the U.S. Public Health Service was responsive to the
position of industry with regard to asbestos disease
in 1961?

MR. GALLO: Objection --

MR. CREEDON: Objection.

MR. GALLO: -- it calls for an opinion
as to the Agency's mental thinking of the
U.S. Public Health Service.

MR. COHEN: It calls for whether he

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has any knowledge of a relationship existing between the asbestos industry and the Public Health Service.

MR. GALLO: That's a very broad statement.

MR. COHEN: That's right.

MR. GALLO: Objection.

THE WITNESS: Shall I answer that or not? Do you want me to answer that?

MR. COHEN: Yes.

THE WITNESS: The only knowledge I have concerning the U.S. Public Health Service, and its relationship to the asbestos exposure, and therefore, the asbestos industry, was their response to Dr. Magnesan, which I believe I testified yesterday, that there was a problem, and it should be investigated. And they gave two million dollars to the U.S. Public Health Service to make this investigation. That is the only knowledge I have of their relationship with the asbestos industry.

MR. GALLO: What do you mean by they?

THE WITNESS: They are the people that

1 I knew in the U.S. Public Health Service, as
2 well as the U.S. Public Health Service, itself.
3

4 BY MR. COHEN:

5 Q. Let me refer you to Exhibit #16.

6 A. Yes, it's on the bottom of the page, yes, I have
7 it.

8 Q. Now, referring you to paragraph two of that
9 minute of the ATI Meeting, I'm reading from about
10 the middle of the paragraph, it says, "They were
11 aware that studies made by the English in South
12 Africa on colored workers may not apply to other
13 ethnic groups with different environmental
14 background."

15 A. Yes.

16 Q. Did you have any information which suggested
17 that persons who were Black might be at a lesser risk
18 than Caucasians or other ethnic groups to disease
19 because of exposure to asbestos?

20 MR. GALLO: Objection.

21 MR. BRUCH: Objection.

22 THE WITNESS: I had no particular
23 knowledge of that area.

24 MR. GALLO: Move to strike.

25 MR. COHEN: On what basis?

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2 MR. GALLO: Calls for medical

3 opinion.

4 BY MR. COHEN:

5 Q. Mr. Horowitz, did you write this document,
6 Exhibit #16?

7 A. Yes, I did. Yes, I did.

8 Q. Do you think in paragraph number two, were you
9 giving a medical opinion?

10 MR. GALLO: Objection.

11 THE WITNESS: I was reporting the
12 conversation that occurred at the meeting.

13 MR. GALLO: Also move to strike that
14 answer because of its irrelevance.

15 MR. COHEN: Well, let me just suggest
16 if it's irrelevant, you introduced the
17 irrelevancy by making this document and reading
18 from portions of it. So, I fail to see the
19 basis for you to object to your own exhibit.

20 MR. GALLO: Perhaps you'll be
21 enlightened later.

22 MR. COHEN: Well, it's going to be a
23 first, if I'm ever enlightened as to how you
24 can impeach your own document.

25 BY MR. COHEN:

1
2 Q. Okay, no --

3 MR. COHEN: Just go off the record
4 for one second.

5 No, I'm sorry, no, let's stay on for
6 a moment, sorry.

7 BY MR. COHEN:

8 Q. I'd like you to look at an exhibit which
9 again, I can't tell what number it is. It's dated
10 January 29th, 1963. It's an ATI, Air Hygiene
11 Committee Meeting. It's Exhibit #22, I'm advised.

12 A. Yeah, I have that.

13 Q. Okay.

14 Would you look at page two of that
15 exhibit?

16 A. Yes.

17 Q. Am I correct that this document discusses
18 a Public Health survey that is to be performed by the
19 U.S. Public Health Service?

20 A. Yes, it is.

21 Q. Okay.

22 And, it says in the next to the last
23 paragraph on page two, "No reports will be issued by
24 the Public Health Service on the study until sufficient
25 information has been collected to permit drawing valid

1 conclusions. The report will not mention names of
2 companies or individuals and special effort will be
3 made to prevent such identification."

4
5 Is that what you meant by cooperation
6 in your prior memo, Mr. Horowitz?

7 MR. GALLO: Objection --

8 MR. BRUCH: Objection.

9 MR. GALLO: Object to the manner
10 in which it was read.

11 MR. BRUCH: The witness has already
12 defined what he meant by cooperation.

13 THE WITNESS: Not at all. It had to
14 do with the privacy of the individuals and
15 the companies.

16 BY MR. COHEN:

17 Q. Well, were individuals going to be mentioned
18 as part of this survey?

19 A. They were assuring the company that individuals
20 who were going to be questionnaires -- questionnaired
21 on their medical history, each individual would be
22 questioned on his medical history, yes.

23 Q. Well, was there any agreement that if the
24 U.S. Public Health Survey -- Service came in and saw
25 a potential for disease, wasn't there an understanding

1 that they would not so advise the employee?

2 A. That was not the purpose of their visit.

3 Q. That's not my question. My question was, wasn't
4 that understood between the -- the industry and the
5 U.S. Public Health Service?
6

7 MR. GALLO: Objection.

8 THE WITNESS: The --

9 BY MR. COHEN:

10 Q. Excuse me, you're shaking your head yes, to
11 my --

12 A. They had no relationship with the employees,
13 so they didn't -- they weren't going to report to
14 the employees, that's right.

15 Q. But, the employer who was being surveyed had a
16 relationship to the employee; did they not?

17 A. It was his duty to then pass on that informa-
18 tion, right.

19 Q. Well --

20 A. If they gave it to him, right.

21 Q. But, wasn't it expressly understood between the
22 asbestos industry and the United States Public Health
23 Service that as a condition to allowing the U.S. Public
24 Health Service into these plants to do this survey,
25 that they were not to advise employees of the plant or

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talk to the employees of the plant about the potential health hazards associated with asbestos?

MR. CREEDON: Objection.

MS. GIBSON: Object to the form.

THE WITNESS: That was not a condition of the study.

MR. GALLO: Objection.

MR. BRUCH: Objection.

BY MR. COHEN:

Q. Was it a condition of the study as far as you know, that's what you're testifying?

A. I never heard them say that this was a condition of the study.

Q. Was it a condition of the study that the names of the plants or the corporations that were viewed would not be published?

A. They said any reports coming from this would not include the names of the companies.

Q. And, do you -- to your knowledge, was that not a condition that was placed upon the U.S. Public Health Service?

A. No, sir, that is a typical method of reporting research.

Q. Well, I know --

1
2 A. Non-disclosure of privacy, stuff like that.

3 Q. I know it was typical for the asbestos
4 industry.

5 A. For conclusions not to be made and stuff
6 like that.

7 Q. No, we're not talking --

8 MR. BRUCH: Object to the
9 characterization --

10 MR. GALLO: Move to strike and edit
11 from the tape that last comment by Plaintiff's
12 counsel.

13 THE COURT REPORTER: For conclusions
14 to be made -- I -- everyone talked at once.

15 BY MR. COHEN:

16 Q. Mr. Horowitz --

17 A. Yes.

18 Q. Okay.

19 Let me -- let me just ask you again,
20 to your knowledge, was that a condition for allowing
21 U.S. Public Health Service into the plant to examine
22 the plant?

23 MR. CREEDON: Objection.

24 MR. BRUCH: Objection, asked and
25 answered.

THE WITNESS: It was not a condition to examine the plants, to my knowledge.

BY MR. COHEN:

Q. To your knowledge, did any State Industrial Hygiene groups that would perform this sort of service, did they -- were they approached with regard to non-disclosure of names of the companies being surveyed?

MR. CREEDON: Objection.

MR. BRUCH: Objection.

THE WITNESS: Can I answer it in my way?

MR. COHEN: You can answer it any way you deem fit.

THE WITNESS: The U.S. Public Health Service at that time being a Federal Agency at that time was not permitted to go into any State plant without the State's knowledge. So, every plant -- every State was approached first and the U.S. Public Health Service had to ask their permission, as well as the plant to go in. Whether there was any kind of discussion concerning the information, I have no idea about that.

BY MR. COHEN:

1
2 Q. Are you familiar with -- or have you read any
3 Asbestos Textile Institute meetings, where there was a
4 discussion about conditioning the inspection of any
5 plants upon an assurance that no names would be
6 mentioned?

7 A. I don't exactly recall that, no.

8 Q. Are you aware that there was a proposal in the
9 1940's to perform hygiene surveys, and that that was
10 discussed at the Asbestos Textile Institute Meetings
11 at various plants?

12 A. That was prior to my time. I have no idea
13 about that.

14 Q. I'm saying, subsequently, in any of your
15 positions for either Keasbey-Mattison or Certainteed,
16 did you have occasion to go backward in time and read
17 minutes of the Asbestos Textile Institute?

18 MR. BRUCH: I object as to Certainteed,
19 because they were not a member of the Asbestos
20 Textile.

21 THE WITNESS: Well, I think one of
22 the exhibits, here, refers to a meeting prior
23 to my time, where -- but, that's the only
24 information I have. The one we discussed this
25 morning.

MR. COHEN: Okay.

BY MR. COHEN:

Q. Now, we are on -- let me ask you, page three of this same document, okay, the last paragraph says, "However, the visit of a team of twelve men from the Federal Agency investigating one of our plants for a full week could create an industrial relations problem. Such a visit would require a great deal of preparation in order to inform plant personnel, the union, and even the community that the study is being made for research purposes only, and that the plant is not being investigated because of any particular problem."

Have I correctly read that?

A. You have.

Q. Is that, in your opinion, a completely accurate and truthful statement at the time you wrote it?

A. Yes.

Q. Was there a concern at Keasbey-Mattison with a particular problem of the development of asbestos related disease?

MR. GALLO: No, objection, to the reference to Keasbey and Mattison.

MR. COHEN: Strike that, I'm sorry,

it was Certainteed Corporation.

BY MR. COHEN:

Q. As of January, 1963 at Certainteed, was there a concern with the particular problems that could arise to employees because of exposure to asbestos?

A. If there wasn't a concern, I spent my time between '60 and '63 uselessly.

Q. Okay.

A. My reports were obviously directed in that direction.

Q. So, that was a concern of Certainteed, was it not?

A. Of course.

Q. Okay.

And one of the reasons that these industrial hygiene people were coming into the plant was to conduct a survey relating to that particular problem; was it not?

MR. BRUCH: Objection.

THE WITNESS: As a research project.

BY MR. COHEN:

Q. Whether it is as a research project or for any other reasons, they are there because of a particular problem that might exist at the plant?

1
2 A. No, because of the concern of the United States
3 concerning the relationship between exposure and
4 disease. As -- as I indicated before, initiated by
5 Dr. Magunsen and so on.

6 THE COURT REPORTER: By Dr. --

7 THE WITNESS: Magunsen, I believe it
8 was, M-A-G-U-N-S-E-N.

9 BY MR. COHEN:

10 Q. And, as I recall, you stated you were not aware
11 that any employee was ever advised that they might
12 have a particular problem, such as carcinoma or
13 mesothelioma due to their exposure to asbestos; is
14 that correct?

15 MR. GALLO: Objection.

16 MS. GIBSON: Objection.

17 MR. BRUCH: Objection.

18 MR. GALLO: That has not been
19 established.

20 MR. BRUCH: That was not his
21 testimony.

22 MR. COHEN: Let me back track.

23 MR. GALLO: Move to strike the
24 question.

25 MR. COHEN: Let me back track.

2 BY MR. COHEN:

3 Q. To your knowledge, was any employee of
4 Certainteed Corporation ever advised that they might
5 develop mesothelioma because of being exposed to
6 the asbestos in the plant?

7 MR. GALLO: Objection, it has been
8 asked and answered.

9 MR. BRUCH: And that's a different
10 question than you asked before, and you're
11 now repeating questions previously asked.

12 MR. PAUL: Objection, as well, for
13 the reasons set forth in my previous
14 objections.

15 THE WITNESS: Do I answer?

16 MR. COHEN: Yes.

17 MR. PAUL: Which are unique to our
18 plaintiff and --

19
20 THE WITNESS: As stated before, it
21 was a great question in their minds, and therefore,
22 they would not have advised them. This is one
23 of the purposes of the study, for a neutral
24 agency to come to conclusions, the study was
25 two fold, environmental and medical. And the

expectation was that this body, agency of the Government, would come to a fair conclusion.

It was never finished. It was -- only the environmental was done.

BY MR. COHEN:

Q. Did Dr. Selikoff ever ask to come to Keasbey and Mattison to perform a survey?

A. If he did, it was not to my knowledge.

Q. Do you know whether Dr. Selikoff ever asked to be allowed to go around to various asbestos plants in the country and perform industrial hygiene surveys?

A. If he did, I have no knowledge of that.

Q. Let me refer you now to -- again, I don't have an exhibit number on the top, it's an August 11th, 1965 memorandum.

A. I have that. That's #25?

Q. If that's what it is.

A. Okay.

Q. I would like to refer you to page two, and this discusses the chest x-ray program. Paragraph three says, Role of the plant (local physician) " --

A. What paragraph?

Q. Last paragraph, under number 3. Each plant must be associated with a competent doctor who is interested

1 in industrial medicine and sympathetic to
2 industry's point of view so that he will screen all
3 applicants at pre-employment physicals and reject
4 those who would be involved in accidents or potential
5 claims.
6

7 And, then, it goes on to make a
8 description of what type of claims might be made.
9 Can you tell me why -- why was it felt necessary to
10 get a doctor who was sympathetic to the viewpoint of
11 industry as opposed to someone who was objective and
12 competent?

13 MR. BRUCH: Objection.

14 MR. GALLO: I object to your
15 asking that, unless the witness has a chance to
16 review the whole document.

17 MR. COHEN: Well, okay, Mr. Horowitz,
18 we'll go off the record, please review the
19 entire document.

20 MR. GALLO: Let's go off the tape.

21 MR. STEWART: We're now going off
22 the record. The time is 12:56.

23 We're now back on the record. The
24 time is 1 o'clock.

25 THE WITNESS: The choice of word,

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2 sympathetic, was a very poor choice of words,
3 I admit that.

4 MR. COHEN: Well --

5 THE WITNESS: In retrospect and even
6 at the time, what I really meant was an under-
7 standing, one that understands the company's
8 problems.

9 BY MR. COHEN:

10 Q. Well, how about a physician who could under-
11 stand the employee's problems and be objective, would
12 that -- would that have been of interest?

13 A. Definitely.

14 Q. Okay.

15 Again, looking at page three, the
16 second paragraph, you're talking -- you're continuing
17 on, you're saying, this doctor should be a responsible
18 mature physician who will provide conservative language
19 in his relationship with the employees concerning
20 their ailments.

21 Why, again, was it necessary to look
22 for a doctor who would be conservative, as opposed to
23 one who would be objective and yet competent?

24 MR. MASON: Objection, argumentative.

25 MR. BRUCH: I object to this question,

1 particularly since it's taken out of context
2 with the previous paragraph.
3

4 MR. COHEN: I'll be very happy to
5 go back to the prior paragraph, if there's
6 something I'm taking out of context.

7 MR. BRUCH: The paragraph right
8 before paragraph -- on page three, before the
9 paragraph, the last paragraph you read.

10 MR. GUSKY: I would just like to
11 know in light of Mr. Cohen's objections he
12 made yesterday, whether he intends to read the
13 entire document into evidence --

14 MR. COHEN: I'll be happy to.

15 MR. GUSKY: -- since he lodged that
16 objection yesterday, when Mr. Gallo made --

17 MR. COHEN: I'll be very happy to
18 sit here and read the entire document into
19 evidence, and if that -- if there's an
20 objection to my reading part of the document,
21 I'll be very happy to.

22 MR. MASON: I object to you reading
23 the entire document.

24 MR. COHEN: Okay. Since Mr. Mason
25 has objected, I -- I'm honor bound not to read

the entire document.

MR. BRUCH: Mr. Cohen, I think you and I reached the agreement that you'll read the first paragraph on page three.

MR. COHEN: That I will read the first paragraph -- oh, yes, I'm sorry.

BY MR. COHEN:

Q. I did skip one paragraph in between the one we just discussed where you said sympathetic was a poor choice in retrospect.

It says, this doctor should be familiar enough with the plant operations so he can recommend that an employee be prevented from doing some types of work. A visit to the plant at least once a year would be advantageous. It then goes on, this doctor should be a responsible, mature physician who will provide conservative language in his relationship with the employees concerning their ailments, and I would again like to ask you, in light of the fact that you utilized the word, a doctor who would be sympathetic to industry's point of view in the first paragraph, why was it necessary to have a doctor who would provide conservative language, as opposed to one who would be objective, and let the chips fall where they may?

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2 MR. GALLO: Objection, move to
3 strike.

4 MR. BRUCH: Objection.

5 MR. GALLO: It's an argumentative
6 question.

7 MR. COHEN: Well, the witness
8 utilized the word. I'm asking him --

9 MR. GALLO: Why don't you ask him
10 what the word meant?

11 BY MR. COHEN:

12 Q. Why did you find it necessary to say that the
13 doctor should be -- use conservative language in
14 his relationship with the employees?

15 A. Because of the potential for disturbing a
16 -- a patient or an employee/patient, as to whether
17 the potential for damage, personal damage, would be
18 greater than it actually is. I think -- I think
19 objective is really the proper word, but for purposes
20 of -- of writing to the plant management, I leaned
21 in the direction of conservative.

22 Q. Well, let me ask, would it not -- would it also
23 inure to the benefit of the corporation, from a stand-
24 point of not being sued or having Workmens' Compensation
25 claims filed against it, to seek a doctor who would use

conservative language in his relationship with the employees?

MR. GALLO: Objection.

MS. GIBSON: Objection.

MR. BRUCH: Objection.

MR. GUSKY: You're asking the witness to make a legal opinion.--

MR. COHEN: I'm asking the witness --

MR. GUSKY: -- he's not qualified to give.

BY MR. COHEN:

Q. In using the word, conservative, did you have any consideration at all as to if the employee became alarmed, he or she may take further steps, such as seeking a lawyer and suing the corporation, was that a concern of yours at all in writing this memorandum?

MR. BRUCH: Objection.

MR. GALLO: Objection, he already told you what he meant.

MR. COHEN: No, he didn't.

THE WITNESS: I would like to answer that by referring to the paragraph you originally started, the beginning of paragraph three.

MR. COHEN: Surely.

THE WITNESS: And it refers to pre-employment physicals.

MR. COHEN: I understand that.

THE WITNESS: And Workmens' Compensation was not involved until the person is employed, so, therefore, compensation had nothing to do with that. The whole point was not to hire somebody from a coal mine or somebody who had a previous disease, and then be blamed, if you want to use that word, for the disease he might have caught with -- gotten somewhere else, or even a back ache or having a back injury or something like that.

BY MR. COHEN:

Q. But, it also talks about the doctor being familiar enough to go on a yearly basis to the plant. So, am I correct --

A. Sure.

Q. So, the purpose, the role of the plant physician locally, was not merely limited to pre-employment physicals, it was in the relationship of that doctor to the plant from the point that the individual was hired forward also?

MR. BRUCH: Objection.

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MS. GIBSON: Objection.

MR. GALLO: Objection to the form
of the question.

MR. BRUCH: And, also, object to the
question, because there has been no testimony
as to a plant physician.

MR. PAUL: Note my continuing
objection to this line of testimony with
respect to our particular Plaintiff's case.

BY MR. COHEN:

Q. The third paragraph -- let me -- let's go back
for a moment --

A. I would like to answer that question.

Q. Well --

MR. GALLO: I think he should be
permitted to answer.

THE WITNESS: Yeah.

What was that?

BY MR. COHEN:

Q. Is it your position that paragraph three, as
we've read it, and that the role of the plant physician
as discussed in this entire exhibit, was limited
solely to pre-employment physicals?

A. Not, but paragraph three was.

1
2 Q. If -- if paragraph three is limited to pre-
3 employment physicals, can you explain to me why
4 we're discussing the fact that the physician should
5 be able to go through the plant on a at least once a
6 year basis?

7 A. Easily, very easily. He should know what the
8 operations are. And if an employee is being hired to
9 do lifting, let's say, then when he examined the
10 employee and he had a curvature of the spine, he should
11 have that knowledge. And, he doesn't know what the
12 man will do unless he is knowledgeable about the plant.
13 A plant physician has no real use to the plant, unless
14 he knows what is -- what the work will be of the
15 employees that he is examining before they get the
16 job. So, that was the purpose of it.

17 Q. Well, when we're talking about the doctor should
18 be responsible, and use conservative language in his
19 relationship with the employees, you're not -- you're
20 not talking about potential employees or newly hired
21 people, you're using the word employees. And I'd like
22 to ask you where -- anywhere within this entire document
23 do you limit the role of the plant physician to being
24 just pre-employment physicals only?

25 A. Only in that paragraph, but I didn't repeat the

fact that they're potential employees, right.

Q. Okay.

You're telling me now, that this paragraph three is limited only to pre-employment physicals; is that correct?

A. Well, in all honesty that last paragraph should read -- I meant for all -- or I should mean for all physicals, but this paragraph referred to only pre-employment, right, item three.

Q. But, there is no mention of that anywhere in the document, that's what I'm asking?

MR. GALLO: Objection, it does mention it in the beginning of paragraph three, and the witness has stated that. And, you're asking now for the fourth time whether it states that.

BY MR. COHEN:

Q. Now, did Keasbey and Mattison or let me just strike that.

Did Certainteed Corporation give yearly physicals once the individual was hired?

A. I don't have recall on that.

Q. Do you know whether doctors would consult -- excuse me, or speak with employees regarding asbestos disease at all at Certainteed, once the employee was

1
2 hired?

3 A. Before they worked with the -- before they
4 worked there, you mean?

5 Q. No, I'm just saying, assuming an employee was
6 hired.

7 A. Yes.

8 Q. Okay.

9 From the point that that individual
10 was hired for -- for Certainteed Corporation, did
11 physicians who were employed by Certainteed, whether
12 on a part-time or full-time basis, ever speak to
13 employees regarding asbestos health hazards?

14 A. I have no knowledge what they spoke to
15 employees about.

16 MR. COHEN: I would like right now
17 just to go off the record. Subject to my
18 review of the documents that were just produced
19 this morning, which I would like to take some
20 time to examine, I have no further questions of
21 Mr. Horowitz. I would like to reserve that
22 until I look at the documents, though. If there's
23 no objection -- if other Plaintiffs' counsel
24 wish to proceed, I'll review the documents while
25 that examination is occurring.

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2 MR. PAUL: Let's go off the tape.

3 MR. COHEN: Okay, we'll go off the
4 record.

5 MR. STEWART: We're now going off the
6 record. The time is 1:10.

7 We're now back on the record. The
8 time is 1:24.

9 BY MR. PAUL:

10 Q. Good afternoon, Mr. Horowitz, I have a few
11 questions for you.

12 Would you turn to Exhibit 22, that's
13 been already marked.

14 A. I have it.

15 Q. Do you see on the top of it a list of people
16 who attended that meeting?

17 A. Yes, I do.

18 Q. Do you see a gentleman identified as Mr. W. H.
19 Johnson?

20 A. Next to the last --

21 Q. Yes.

22 A. -- yes.

23 Q. Do you have any recollection of his presence
24 at that meeting?

25 A. I don't know the gentleman.

1 Q. You do not know the gentleman.

2 Do you know the company that he
3 works for?

4 MR. GALLO: Objection.

5 BY MR. PAUL:

6 Q. The document -- what does the document say
7 the --

8 A. It says Atlas Asbestos Company, and I vaguely
9 remember an Atlas Asbestos Company.

10 Q. What do you recall about Atlas Asbestos
11 Company?

12 A. Nothing special.

13 Q. Do you recall where they were located?

14 A. I have no recollection.

15 Q. Do you have any recollection of who they were
16 owned by?

17 A. I have no recollection.

18 Q. Now, as I understand it, that at your last
19 deposition in 1980 that we've spent so much time
20 talking about --

21 A. Yes.

22 Q. -- that you produced various documents; is
23 that correct?

24 A. That is correct.

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Q. Do I also understand that subsequent to that deposition, in response to requests for review of your files, you discovered other documents?

A. I was asked to bring in other documents that I made reference to at the deposition.

Q. Did you, in fact, do that?

A. I sent it to Ms. Gibson.

Q. And, who is Ms. Gibson?

A. She is the attorney for Shea, et cetera.

Q. Now --

A. I can't remember everything, can I?

Q. Now, sir, I would like to show you, in turn, some documents that I was handed this morning. I'm going to first show you this document, and ask you to review it.

You've read it, sir?

A. Yes, I don't -- I don't have to read it.

Q. Do you recognize --

A. I don't remember every word, but I --

Q. Do you remember what this document is, sir?

A. Yes, I do.

Q. What is it?

A. It's a review of a conference on biological effects of asbestos that was given by the New York

1 Academy of Sciences, New York City, at the Waldorf-
2 Astoria. It was attended by Mr. Shaw and myself.

3 Q. You attended this conference?

4 A. I did.

5 Q. Now, is the document that you see in front of
6 you, was that contained in a file which you maintained
7 in the ordinary course of your business?

8 A. That was a copy of a memo that Mr. Shaw, who
9 apparently was consultant to Mr. Hutchcroft of Research
10 for R&D, and he sent a memo covering that meeting to
11 Mr. Hutchcroft, and I received a copy, one way or
12 the other.

13 Q. And this document -- this is that document?

14 A. This is that document.

15 Q. And, it was maintained in your file?

16 A. It was maintained in my file.

17 Q. Until the time that you provided it to Ms.
18 Gibson in the -- as a result of the request made at the
19 last deposition?

20 A. I provided a copy of that.

21 Q. Now, sir, there are -- there are names of certain
22 persons referred to in this document --

23 A. Yes.

24 Q. -- Dr. S. Holmes, a Dr. J. F. Knox, a Dr.

1
2 Beatty and a Mr. D. W. Hills. With respect to each
3 of the four --

4 A. I have my copy.

5 Q. Oh.

6 With respect to each of these four
7 gentlemen, in turn, do you recall meeting them in
8 1964?

9 A. I do.

10 Q. Did you meet all four of them?

11 A. I did.

12 Q. Are they the four gentlemen that are referred
13 to in the document that was marked yesterday as
14 Exhibit 29?

15 A. Am I to turn to that?

16 Q. I would like you to turn to Exhibit 29, and
17 ask me if they're the same four gentlemen.

18 A. Do you recall which paragraph it was?

19 Q. Certainly, right here, the discussions and
20 the meeting.

21 A. Yes, it was. It refers to discussion the
22 evening before the conference, and therefore, it was.

23 Q. And that is with these four gentlemen?

24 A. These are the four gentlemen.

25 Q. All right.

Do you have any -- were you told by any of these gentlemen what their functions were, or their duties, or how were they otherwise identified?

A. I had a general feeling that the asbestos --

MR. MASON: Objection, that's not responsive. He asked, were you told.

BY MR. PAUL:

Q. You can answer -- you can answer the question, Mr. Horowitz, you can go ahead and answer the question.

A. Yeah. It's difficult for me to remember that I was told, but it was written in this memo, and therefore, I have knowledge of the fact that they were from the Asbestos Research Council of England, and my understanding was they were consultant to the Turner -- or Turner and Newall people, I thought at the time.

Q. What was the substance of your -- was the substance of your conversation what appears in Exhibit 29, and the document that I just handed to you? Do those documents accurately summarize the substance of your conversations?

A. The substance of the conversation is in the document which you just handed to me, which reviewed the conference, and that meeting, itself, and I'd have

to look on Exhibit 29 to see whether there is a reference to that.

Q. Here's another copy of 29.

A. Do you have a copy, give me a copy of yours.

Q. Here's a copy of 29.

A. Yes, this Exhibit 29 was my review of the similar meeting and also Mr. Shaw's paper; that's correct.

MR. PAUL: I would like this document that he identified marked as Horowitz 30.

THE WITNESS: That's Conference on Biological Effects of Asbestos?

MR. PAUL: Yes, that's correct.

Can we go off the videotape for a moment?

MR. STEWART: We're now going off the record. The time is 1:31.

MR. PAUL: I wish to make a statement for the stenographic record that I don't wish to appear on the videotape, that is that the line of questions which I have been pursuing for the last few minutes, that I will be pursuing for the next few more, and the documents which are being offered, are offered without any

1 attempt or desire by us to waive the
2 objection to the entire deposition, and
3 to it's use at trial, which Mr. Shein made
4 yesterday. I want that clearly understood
5 for the record that this Cross Examination
6 is not in negation of our right to object to
7 it. All right, we can go back.

8
9 MR. MASON: What do you mean by the
10 documents now being offered. Are you
11 offering something into evidence now?

12 MR. PAUL: Well, 30, I just offered,
13 there are going to be a couple more.

14 MR. MASON: I object to that.

15 MR. PAUL: Your objection, as
16 always, Mr. Mason, is noted.

17 MR. MASON: You have not offered
18 anything other than 30 so far?

19 MR. PAUL: I wish to make this general
20 statement, before I offer the remainder of
21 the documents.

22
23
24 MR. STEWART: We're now back on the
25 record. The time is 1:33.

1
2 BY MR. PAUL:

3 Q. Now, Mr. Horowitz, I now would like to show you
4 another document, and I would like you to read it,
5 if you would.

6 A. You want me to read the whole document?

7 Q. No, I just want you to read it to yourself.

8 Have you -- have you read it
9 sufficiently?

10 A. I just want to finish the last paragraph.

11 Q. Please.

12 A. Okay.

13 Q. All right.

14 Now, do you recognize this document?

15 A. Yes.

16 Q. What is it, sir?

17 A. It's a document that I wrote reporting on my
18 attendance at a meeting of the Industrial Hygiene
19 Foundation, now called the Industrial Health Foundation,
20 I believe, to Mr. M. S. Davis, who was Vice-President
21 of the Pipe Division. The meeting occurred October 18th
22 and 19th, and I wrote the memo November 2nd, 1966.

23 Q. Is -- this document was prepared by you, sir?

24 A. Yes, it was.

25 Q. This is a true and correct copy?

1 A. Yes, it is.

2 Q. Was it in your personal file during the time
3 that you were employed --
4

5 A. Yes, it was.

6 Q. -- it would have been in 1966 by Certainteed?

7 A. Yes, it was.

8 Q. Is this also one of the documents supplied by
9 you to Ms. Gibson, as a result of the previous
10 deposition?

11 A. I believe it was.

12 Q. You believe it was?

13 A. I believe it was. I can't remember that this
14 particular document was one of those.

15 Q. But, you do recall preparing the memorandum?

16 A. Oh, yes.

17 Q. And, it was prepared by you?

18 A. Yes, it was.

19 Q. And, it was in your file?

20 A. Yes, it was.

21 Q. And, it was prepared by you in the course of
22 your employment by Certainteed?

23 A. Yes, it was.

24 Q. Do you recall the meeting of the Industrial
25 Hygiene Foundation that is referred to in this

2 memorandum?

3 A. The -- the memo, itself, reminds me of the
4 meeting.

5 Q. Do you have any independent recollection of
6 who else was present at that meeting, or any other
7 persons or companies appearing through representatives
8 present at that meeting?

9 A. I don't have total recall. The memo, itself
10 written in 1966 refers to several people, and that
11 reminds me that I met those people there. Other than
12 that, I cannot recall.

13 MR. PAUL: Can we go off the record
14 for just a minute.

15 MR. STEWART: We're now going off the
16 record. The time is 1:36.

17 We're now back on the record. The
18 time is 1:37.

19 MR. PAUL: I would like the court
20 reporter to mark this document that Mr. Horowitz
21 just identified as #31.

22 (Whereupon Exhibit #31 was marked for
23 identification purposes, as of this date,
24 February 2, 1982, by the court reporter.)

25 BY MR. PAUL:

1
2 Q. The -- I would like to show you, sir, another
3 document. If you would read it.

4 A. It was written on October 30th, 1967 by me to
5 Mr. A. Alpine. The subject was, Report on Bioeffects
6 of Asbestos at an Industrial Hygiene Foundation Meeting,
7 at the Mellon Institute on October 11, 1967.

8 Q. Now, before you go on, sir --

9 A. Yes.

10 Q. -- who is Mr. Alpine?

11 A. Mr. Alpine, at that time, was the Chief
12 Engineer of the Pipe Division, to whom I was
13 administratively responsible to.

14 Q. And, was this document written by you?

15 A. Yes, it was.

16 Q. And, was it written by you in the course of
17 your duties at Certainteed?

18 A. It was written by me in the course of my duties
19 at Certainteed.

20 Q. And, was a copy thereof, placed in your files
21 that you maintained in your office?

22 A. Yes, it was.

23 Q. And, do you recall if this document is among
24 those which you provided to Ms. Gibson?

25 A. I believe it was, but I can't remember exactly.

1
2 Q. And, can you tell the Jury what the report
3 involves, what was the subject of the report?

4 A. It was a report to my superiors of what I heard
5 or discovered at this meeting, relating to problems in
6 our plant, in particular asbestos.

7 MR. PAUL: I would like to have this
8 marked as #32, Horowitz 32.

9 (Whereupon Exhibit #32 was marked for
10 identification purposes, as of this date,
11 February 2, 1982, by the court reporter.)

12 MR. PAUL: Thank you, very much, sir.
13 I have no further questions.

14 THE WITNESS: Thank you.

15 MR. STEWART: Any other questions?

16 MS. GIBSON: Yes.

17 BY MS. GIBSON:

18 Q. Mr. Horowitz, do you have any specific
19 knowledge about how Cassiar fiber was packaged during
20 the years 1960 to 1968?

21 A. I have no specific memory of that at all.

22 Q. Okay.

23 You weren't aware, were you, of all
24 communications that were made to employees of Keasbey-
25 Mattison or Certainteed by foremen, plant managers or

1
2 other personnel of those companies, were you?

3 A. I was not aware or privy to that information.

4 MS. GIBSON: Okay, I have no other
5 questions.

6 BY MR. COHEN:

7 Q. Mr. Horowitz, I just want to ask one question
8 with regard to Exhibit #32.

9 A. Is that one of the new exhibits?

10 Q. That's one of the newer exhibits, yes, sir, that
11 Mr. Paul showed you.

12 A. Yeah.

13 Q. It's October 30th --

14 A. Yes, I have it.

15 Q. -- memorandum that you prepared. On the side
16 of the document, at least the copy that I have, it's
17 not completely legible, there appears to be some
18 notations. Do you have a photographic copy or a simul-
19 taneously produced copy of that exhibit?

20 A. I might have an original copy at home, but I
21 don't -- I brought only copies of the exhibits that
22 Mr. Gallo said he would present. So, I don't have
23 that.

24 Q. Okay.

25 Let me just ask you, --

1 A. Yeah.

2 Q. -- do you recognize the handwriting in the
3 margin?
4

5 A. Yes.

6 Q. Am I correct it says J.M. uses ten-15 percent
7 crocidilite?

8 A. Yes.

9 Q. J.M. standing for what?

10 A. Johns-Manville.

11 Q. And, can you read anything that appears
12 thereafter, or do you know what it says of any indepen-
13 dent knowledge that you have?

14 A. The next four small lines are not very clear,
15 maybe somebody else's copy is clearer. The statement
16 after that, it says, Hutchcroft, the word looks like
17 saw, there's no S there, but it looks like saw this,
18 and then J.M. something and --

19 Q. Well, something J.M. --

20 A. Or something crossed out, J.M., recent, I think
21 it was, after that, and something Pling Stock, R&D
22 Building, 1968, that's about all I have.

23 THE COURT REPORTER: What comes
24 after that, something Pling?

25 THE WITNESS: Something P-L-I-N-G

stock. The word, the beginning of the word is erased. And then R&D Building, which is where Mr. Hutchcroft worked, and the date is 1/ 9/68. I think it refers to a verbal conversation I may have had with Mr. Hutchcroft.

BY MR. COHEN:

Q. Now, when you wrote this particular notation on the side of the memorandum, and I would like to ask now on the record, if you would somewhat do the same thing or repeat a function that you did before, and that is when you leave this deposition and go back home, if you would check your records to determine whether you have an original of this, and would you be good enough to make that available to counsel with an understanding that the original will be returned to you. We just -- I would like to get a clearer copy --

MS. GIBSON: I may have a better copy. I think I can read it.

MR. COHEN: Okay. Can I -- thank you.

THE WITNESS: These may have been copied from that, right, and that may be a copy from --

MR. COHEN: Yes, I can -- I can read

the copy that Ms. Gibson has given me somewhat better.

THE WITNESS: Right.

BY MR. COHEN:

Q. But, let me show it to you, because you're the one that authored it.

A. Yes, that's much clearer.

Q. Okay.

Can you read that for the Jury?

A. J.M. uses 10 to 15 percent crocidilite. J.M. stopped -- I can't really read that word, stopped, and another word, which I can't read, something while, but decided to go back to something. Hutchcroft saw this in J.M.'s recent coupling stock in R&D Building, 1/ 9/68.

So, apparently, it was not a note to Hutchcroft, but just a note to myself or --

Q. Okay.

Could I ask -- and with Ms. Gibson's permission, could I get that particular document copied to be put in as the exhibit for the deposition, and again, I would -- I would ask because there is some non-clarity, if you could go back to your records and check if you have the original available, if you could

1
2 make it available to Counsel with an understanding,
3 we'll try and get as clear a copy of it as possible and
4 return it back to you.

5 A. What if I find this and make a -- one copy and
6 if my copy is clear, pencil it in so that future
7 copies are clearer, would that be all right or should
8 I not touch that?

9 Q. No, that might make -- I would prefer not, that
10 could get into certain evidentiary questions.

11 A. Well, I'll try making a photocopy. If I can
12 make good photocopies, I'll do that.

13 Q. Okay.

14 A. If not, I'll send the original, and he'll send
15 it back to me.

16 Q. Okay.

17 A. Mr. Gallo. Okay?

18 MR. STEWART: Excuse me, gentlemen,
19 this is the end of tape number eight. The
20 time is 1:46.

21 This is the beginning of tape number
22 nine. The time is 1:47.

23 BY MR. COHEN:

24 Q. Mr. Horowitz, based upon this notation, to the
25 extent we can read it, or do you have any independent

recollection that Johns-Manville Corporation supplied crocidilite, raw asbestos fiber, to Keasbey-Mattison, or to Certainteed Corporation?

MR. CREEDON: Objection.

THE WITNESS: I have no such information.

BY MR. COHEN:

Q. Do you know whether this related to Johns-Manville's production of asbestos cement pipe, which it distributed?

MR. CREEDON: Objection.

Q. Did you -- I'll rephrase the question.

In other words, this notation with regard to Johns-Manville using ten to fifteen percent crocidilite, with regard to asbestos cement pipe. Does this refer to Johns-Manville's use of crocidilite for its own asbestos pipe that it distributed, or --

A. It was information that I picked up at a meeting that became public in that way, and I --

MR. CREEDON: Objection.

THE WITNESS: -- was given this information to Hutchcroft, who was our research man.

MR. CREEDON: Move to strike the answer.

THE WITNESS: -- who, apparently,
would have been interested in that.

MR. COHEN: Okay.

MR. CREEDON: Move to strike the
answer.

MR. COHEN: I have no further questions.

MR. CREEDON: I would like to move to
strike all questions and answers with regard to
that document, as being beyond the scope of
Direct Examination.

MR. COHEN: Well, this document wasn't
offered during Direct Examination, and --

MR. CREEDON: That's why I'm moving
to strike it.

MR. COHEN: Okay, well, I certainly
think to the extent that there's a document
that has bearing on the witness' testimony
that was not produced and through inadvertence
I'm certainly not suggesting it was otherwise,
or through misunderstanding or what not, we're
not bound by that Direct testimony, if the
document exists.

MR. CREEDON: Well, it's my position
that Counsel can limit his examination any way

he choses, and he did by not referring to that document, and, therefore, I'm objecting.

MR. COHEN: Well, if -- if the Judge agrees with you, and these documents are not allowed into evidence, then I'm going to request an instruction to the Jury that they may infer that documents and records not produced or admitted were not produced, which may become available, there be an instruction to the Jury that those would be adverse to the interest of the Party offering them.

MR. GALLO: Just so the record is clear --

MR. CREEDON: Well, I'd like the record to show that I'm not offering any of these documents --

MR. COHEN: I'm saying by the Party who offers them. I assume they're going to be offered at some point.

MR. CREEDON: Well, I'm not offering them here, so to the extent that it can't possibly refer to my client at this particular time. And I -- neither did I offer the witness here for examination. I did not call this witness.

MR. PAUL: I also want to note for the record that we join in Mr. Cohen's answer to Mr. Creedon's objection.

MR. GALLO: I would just like to note for the record that I think that use of the term, produced, is incorrect. These documents were not produced subject to any discovery request by Plaintiffs' counsel, because Plaintiff's counsel from any firm involved in this deposition, did not make any discovery request, either request for production, Interrogatories, prior discovery deposition of the witness, prior to being present to cross examine him at this trial deposition.

So, --

MR. PAUL: We've had --

MR. COHEN: We've already -- we've already had that, and you can't ask for that, which you were never given or made aware of, so --

MR. PAUL: We've had that argument already on the record --

MR. COHEN: Right, let's not do it twice.

MR. PAUL: -- and our position is, I

think, relatively clear on both sides.

MR. GALLO: As is mine.

MR. COHEN: Mr. Mason, it looks like
he's waited with baited breath.

BY MR. MASON:

Q. Mr. Horowitz, if -- so my colleagues' recollection
is correct, yesterday you referred to Dr. Knox as being
"from Turner and Newall, and if my recollection is
correct, a few minutes ago, you read from a document
in which Dr. Horowitz --

A. Dr. Knox.

Q. -- Dr. Knox was described as a consultant to
Turner-Newall.

A. Yes.

Q. Do you know Dr. Knox' exact relationship with
Turner-Newall, or what it was?

A. It's apparent that I'm confused about that.

Q. Well, do you know what his relationship
was?

A. I -- I don't know. There's --

Q. I'm not asking you what you believe.

A. I don't know.

Q. What you know.

A. Okay.

1
2 Q. I gather as part of your responsibility to go
3 to meetings of organizations like the Industrial Hygiene
4 Foundation; is that correct?

5 A. Yes, it was.

6 Q. And to read the reports of meetings of
7 organizations like that; is that correct?

8 A. To attend the discussions and make reports that
9 were pertinent to our problems, to the company's
10 problems.

11 Q. Wasn't it also part of your responsibility to
12 read literature?

13 A. Oh, yes, definitely.

14 Q. That came out of meetings which you didn't
15 attend?

16 A. Yes, definitely.

17 Q. And, to attend those meetings and read the
18 literature, and to pass that information on to manage-
19 ment of the companies for which you worked; is that
20 correct?

21 A. Information that was pertinent to what I
22 thought were our problems, yes.

23 Q. And, those had to do, basically, so far as I
24 heard your testimony, with dust control in the plants
25 was one; correct?

1 A. Yes.

2 Q. And the other area, which seemed to be an area
3 of your concentration was for the medical programs,
4 for the employees --

5 A. Exposures to all toxic materials of the
6 employees, yes.

7 Q. As they related to medical programs for your
8 employees such as these annual physical examinations?

9 A. As related to occupational disease which
10 related to medical problems.

11 Q. Yes.

12 A. Yes.

13 Q. And, so, it was your responsibility to stay
14 current on developments in the industrial hygiene
15 or exposure area; is that right?

16 A. It was my choice, and accepted by management,
17 to accept that responsibility, yes.

18 Q. So, not just your choice, it was your job;
19 right?

20 A. I wasn't hired for that. I -- I repeated that
21 several times. But, I chose to do it, because it
22 allied with dust control. So, therefore, I became
23 the industrial hygienist for the company. So, therefore,
24 it was my responsibility, yes. I'm -- I'm accepting it
25

2 as a responsibility.

3 Q. Okay.

4 And, did you fulfill your responsi-
5 bility, to the best of your abilities?

6 A. Without question.

7 Q. Were you at any time deprived of any knowledge
8 or information that you felt you should have gotten?

9 MR. COHEN: Objection.

10 MR. BRUCH: Objection.

11 MR. COHEN: That assumes you have
12 to be aware of the total body of knowledge in
13 order to make the determination as to whether
14 you're deprived.

15 MR. MASON: Well, I'm asking him
16 whether he ever felt he had been deprived of
17 any knowledge or information, which he felt
18 he should have gotten.

19 MR. BRUCH: I object to that question
20 because he used the word felt. This is a man
21 that testifies to what he knows or doesn't know,
22 not what he feels.

23 BY MR. MASON:

24 Q. Go ahead, we've had these little colloquies
25 before, and Mr. Cohen has said, go ahead and answer

the question.

MR. COHEN: Mr. Cohen did not say that. I just -- I objected to the form of the question.

THE WITNESS: From the capacity of industrial hygiene expert for both of these companies, I felt free to go to any meeting I chose that I thought was pertinent to our problems, and I was assigned duties on committees, which -- in which I represented the company, where these problems were covered, right.

Does that answer your question?

MR. MASON: No, sir, it doesn't.

BY MR. MASON:

Q. Were you ever constrained in any way by your employers from going out and seeking whatever information was available?

MR. PAUL: Object to that, too.

THE WITNESS: I was never constrained from that, no.

BY MR. MASON:

Q. You were not constrained?

A. Not that I know of.

1
2 BY MR. MASON:

3 Q. You were free to go get whatever information
4 you thought you should obtain; is that right?

5 A. Yes.

6 Q. Regardless of its source, no one said, don't
7 go here or don't go there, did they?

8 A. Never -- never did I ask to go or look for
9 something, where I was told I shouldn't go.

10 MR. MASON: That's all I have.

11 MR. GALLO: I have another question
12 or two. Any others before I go?

13 MR. STEWART: This concludes the
14 deposition --

15 MR. GALLO: Wait --

16 THE WITNESS: There's another
17 question.

18 MR. COHEN: You can conclude it, if
19 you want. We'll just do this as an epilogue.

20 BY MR. GALLO:

21 Q. Mr. Horowitz, you spoke earlier in response to
22 Mr. Cohen's question, about the threshold limit
23 value, as it related to the concern about cancer.

24 A. Yes.

25 Q. And --

MR. COHEN: Not mesothelioma.

BY MR. GALLO:

Q. And, at the time, you gave your testimony, I believe you were speaking in the present tense; do you recall that?

A. I made reference, the discussion at the time had to do with the threshold limits relating to cancer and mesothelioma. And I made reference to the fact that the idea or the concept of threshold limit had no real relationship to cancer, but in actuality, as far as asbestosis goes, lung cancer is associated with asbestosis and is a dose relationship while mesothelioma is not. So, I was a little confused there, as far as I'm concerned, the threshold limit value which is -- there are still a threshold limit value, and apparently, the people who make the decision to keep that threshold limit value, have decided that that value, if people were exposed to less than that value, they would not also get the cancer, I believe.

MR. COHEN: I object -- excuse me, I object to the answer as given. I recall only for -- well, he's speculating as to what someone else perceives or thinks. So, I object to it on that basis.

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Leon Horowitz - Redirect

200

MR. PAUL: Also object

he has been unqualified as an expert --

THE COURT REPORTER: He's been

unqualified --

MR. PAUL: As an expert. And is not

offered as an expert, as well as in Mr.

Gallo's offer or proof.

BY MR. GALLO:

Q. Mr. Horowitz, between the years 1960 and 1968,
when you were employed by Keasbey and Mattison and
Certainteed, and after you became aware that there
had been writings concerning a risk of cancer flowing
from asbestos exposure, was it believed that that risk
of cancer only existed for those who already got
asbestosis?

MR. COHEN: Objection, you say was

it believed, when, by whom. I have no idea.

BY MR. GALLO:

Q. Did you believe --

MR. PAUL: It's not part of your

offer of proof, Mr. Gallo, I also object.

MR. GALLO: Let me -- let me state

the question again so that the record will be

clear.

1
2 BY MR. GALLO:

3 Q. During the years, sir, that you worked for
4 Keasbey and Mattison and Certainteed and after you
5 became aware of certain suspicions concerning a risk
6 of cancer from asbestos exposure, did you believe that
7 the risk existed only for those who first developed
8 asbestosis?

9 A. I -- I think I would answer that and say that they
10 were both dose related, asbestos -- asbestosis is
11 related to times, time exposure, and individual's
12 susceptibility and so is cancer. In essence, my
13 belief was that if discoverable, a patient would have
14 asbestosis and/or cancer, if he had cancer, but not
15 cancer alone without asbestosis. But, I am not --
16 that's a medical opinion, and I --

17 MR. PAUL: Move to strike the entire
18 answer.

19 MR. COHEN: Right.

20 BY MR. GALLO:

21 Q. Did you believe that in controlling the dust
22 counts to within the threshold limit value for
23 asbestosis, that such control would also serve to
24 prevent the further development of cancer?

25 A. In the absence of any other information from the

2 people who set these threshold limits, yes, I did
3 believe that.

4 MR. GALLO: Thank you. That's all
5 I have.

6 MR. STEWART: Any further questions?

7 MR. COHEN: Yes.

8 BY MR. COHEN:

9 Q. Mr. Horowitz, is it your statement that
10 unless an industrial hygiene group said to you,
11 personally, that there was or was not a relationship
12 between threshold limit value and cancer, that
13 you were not going -- that you were going to
14 disregard other information that was available in
15 the scientific and medical literature?

16 A. My practice, and I believe the practice of
17 every responsible industrial hygienist was --

18 Q. Let me ask you, if you would, limited --

19 A. Limited to my practice.

20 Q. Limited to your practice since you can't speak
21 for every industrial hygienist.

22 MR. GALLO: Would you please restate
23 the whole question?

24 THE WITNESS: Yes, restate it.

25 MR. COHEN: Sure.

1
2 BY MR. COHEN:

3 Q. My question is, was it your belief that unless
4 some agency that dealt with industrial hygiene were
5 to come down with a final word, yes or no, as to
6 whether there was a relationship between TLV and the
7 development of cancer, that no such relationship
8 existed?

9 MR. BRUCH: Objection.

10 THE WITNESS: I would change your
11 question and say, would I accept the studies
12 of individuals if the community that sets the
13 threshold limits has not changed their threshold
14 based on the studies that other people,
15 individuals have made. I will wait until that
16 responsible organization makes that decision,
17 yes.

18 BY MR. COHEN:

19 Q. No matter how long that takes?

20 A. No matter how long that takes. I have no
21 responsibility as an individual to choose, to pick and
22 choose who I want to believe and who I don't want to
23 believe.

24 Q. Do you believe that you had a responsibility,
25 though, to report the existence of opinions whether

1
2 adopted by a Governmental hygienist group or not,
3 that a person might get asbes -- might get cancer or
4 mesothelioma, irrespective of the amount of fiber
5 that that person was exposed to?

6 A. Yes, I do.

7 MR. GALLO: Objection.

8 BY MR. COHEN:

9 Q. And, you did so report that; did you not?

10 A. I did so report to those that I was
11 responsible to.

12 MR. COHEN: I have nothing further.

13 MR. STEWART: This concludes the
14 deposition. The time is 2:03.

15 - - -

16 (Witness excused.)

17 (Whereupon the videotape deposition
18 was concluded at 2:03 p.m.)

19 - - -

20
21 REPORTED BY: Suzanne McLaughlin White,
22 Registered Professional Reporter -
Notary Public

23 TYPIST : Margaret E. Belza
24
25

CERTIFICATE

Commonwealth of Pennsylvania:

: SS

County of Philadelphia :

I, Suzanne McLaughlin White, Notary Public within and for the County of Philadelphia, Commonwealth of Pennsylvania, do hereby certify that the foregoing deposition of LEON HOROWITZ, was taken pursuant to notice at the offices of KNIPES-COHEN ASSOCIATES, 400 Market Street, Philadelphia, Pennsylvania, on Tuesday, February 2, 1982; that said witness was duly sworn before the commencement of his testimony; that the testimony of said witness was written in shorthand by myself and reduced to typing under my direction and control; that the foregoing is a true and correct transcription of the testimony; that I am not related to or employed by any of the parties, or their attorneys or agents, or interested directly or indirectly in the matter in controversy either as counsel, attorney, agent or otherwise.

1
2
3 IN TESTIMONY WHEREOF, I have hereunto
4 set my hand and affixed my seal of office at
5 Philadelphia, in said County, this 28th day of
6 February, 1982.
7
8
9

10 *Suzanne M. Gagliardi White*
11 NOTARY PUBLIC
12

13 SUZANNE R. McLAUGHLIN
14 Notary Public, Phila. Phila. Co.
15 My Commission Expires Dec. 17, 1984
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I HAVE READ THE FOREGOING DEPOSITION
AND THE ANSWERS GIVEN BY ME ARE TRUE AND CORRECT
TO THE BEST OF MY KNOWLEDGE, INFORMATION AND
BELIEF.

SIGNATURE

WITNESS TO SIGNATURE

ADDRESS

Ambler Research

Nov. 3, 1964

Ambler R&D

C. R. Hutchcroft

Conference on Biological
Effects of Asbestos - New Yo

M. C. Shaw/mdp

CONFERENCE ON BIOLOGICAL EFFECTS OF ASBESTOS
New York Academy of Sciences
Section of Biological and Medical Sciences
New York City - October 19-21, 1964

The Conference on the Biological Effects of Asbestos was held from Monday, October 19 through Wednesday, October 21 and was attended by some 200 medical authorities and pathologists, asbestos fiber authorities and air hygienists, from many countries throughout the world. Mr. Horowitz and I arrived in New York on Sunday afternoon, October 18, and immediately contacted certain of those members of Turner Brothers Asbestos Company who were in attendance representing the Asbestosis Research Council of England. Consideration was directed to the work of the Council and its intended participation in the work of this conference. Included in this group were: Dr. S. Holmes, Dr. J. F. Knox, Dr. Beatty and Mr. D. W. Hills. The seriousness of the problems involved are fully appreciated by everyone; however, the technological advancements that have been achieved through the efforts of this English association and the application of proper controls in the manufacturing areas have served to provide markedly improved conditions throughout the asbestos industry in that country. The Asbestosis Research Council was established in England in 1957 and the members have accomplished a great deal of good during the period since that time. It was felt by many that this meeting would serve as a medium for proclaiming and demonstrating some of these accomplishments. We contacted and talked with most of the members of this group as well as members of the Council representing Cape Asbestos and British Belting and Asbestos Ltd. who were present on several occasions throughout the week and are greatly impressed with their abilities and work.

The meeting, however, turned out to be different than had been expected as the original intent. In fact, a newspaper article that was carried a couple of weeks prior to this conference by several hundred newspapers in America and abroad, served to arouse our suspicions as to the true intent of this meeting and these suspicions were confirmed as the various discussions unfolded.

The conference was organized under the direction of Dr. Irvin J. Selikoff, Mount Sinai Hospital, who serves the Asbestos Workers of America, a trade union which covers principally those who work as insulators and ladders using asbestos insulation materials. The program was nearly two years in the making and was well planned and organized to promote the interests of Dr. Selikoff and the Union. The subjects covered ranged from the geology and physical and chemical properties of the several asbestiform minerals to such medical considerations as Pulmonary Asbestosis, Neoplasia and Mesothelial Tumors presumably resulting therefrom. Many areas throughout the world were covered from Quebec to South Africa and from Milan, Italy to Miami, Florida.

There were many pathological discussions complete with photographic studies showing the asbestos fibers and asbestos dust bodies at the site of an abnormality in the lung and other organs of human and animal bodies. Tumorous growths were shown not only in animals but in men and women who had been autopsied and the evidence apparently served to prove that asbestos was the cause of the malady. The identifications were apparently true and were repeated and often duplicated by Pathologists from New York; London; Glamorgan, Wales; Johannesburg, South Africa; Belfast, etc.

To cite but a few of the cases and observations that were presented which are now in print and a matter of record and will require a refutation in kind, we offer the following:

- (1) One author stated that not only did the men who worked in the asbestos mines have asbestos bodies in various parts of their system but that the donkeys, the dogs and even the rats in the neighborhood were so afflicted.
- (2) Dr. Muriel Newhouse reported a case in England where a girl who, up to the age of 5, resided near an asbestos factory but at that age moved away from that area. Twenty years later this girl developed a mesothelial tumor, induced by an identified asbestos body. Further, a playmate of this girl has been located in another part of the country and has been found to be suffering a similar fate.
- (3) Dr. Hagelschmidt reported that the amount of asbestos exposure in time and quantity is not necessarily the important factor. One or a very few asbestos bodies can serve as the mechanism for the development of a malady, and that an asbestos body may lay dormant in a human body many years before becoming active.

- (4) Dr. J. G. Thomson reported that the inhalation of asbestos fibers by urban dwellers is very similar in Capetown, S. Africa and in Miami, Florida. No less than 30% of the males and 20% of the females in 500 autopsies studied in both cities showed asbestos bodies. It was this gentleman who "speculated" that the asbestos contamination in the Miami air was induced by automobile brake lining disintegration.

We have submitted a collection of all of the abstracts of the papers delivered at this conference and a study of these alone serve to provide the underlying tone of the meetings. It is quite apparent that the whole affair was motivated and executed in the interest of the Asbestos Workers of America. The New York Academy of Science and many of the speakers, I feel, did not realize how they were being used until the session was underway. While it is an indictment of the dusty conditions of the asbestos insulator, and perhaps justifiably so, it also indicts the entire asbestos industry from the mine to the ultimate end product which contains asbestos. It occurred to me as the conference developed that the role of asbestos as it affects the lung and pulmonary functions of that area of the human body was being given less attention and a greater emphasis placed on the carcinogenic effect of asbestos fibers. Cancer of the lung, stomach and various other locations throughout the human body were cited and the relationship of asbestos exposure and actual asbestos fiber inclusions were identified in those areas. In this connection the entrance of asbestos fibers into the body not only through breathing and the nose, but by ingestion through the mouth as well was given attention.

Discussions with Dr. Gaze and Robert Cryor of Cape Asbestos; Mr. Woodroffe, Canadian Bureau of Mines; Mr. Hough and Dr. Kenneth Smith of Johns-Manville Corp; the several members of the Turner Brothers Asbestos Company delegation and with many others concerned with the serious implications here involved would indicate that the asbestos industry should take some positive actions to clarify the truths and to correct any untruths that may have been presented. A dispassionate appraisal of the contents of each paper here presented must be made and an evaluation and a differentiation be made between the fact and fiction. The Asbestosis Research Council has been engaged in this work for many years and has made good progress both in the medical as well as the dust control areas of concern. This experience could well serve as a basis for and perhaps the initiation of considerations related to the problems at hand.

I personally feel that in this country the asbestos textile industry has much more at stake in this problem than do those in the A/C business and would imagine that some organized effort in this regard by that segment of the industry will be forthcoming. Certain-tee'd must, of course, make every effort to provide maximum safety and minimum dust count conditions in the manufacturing operations; however, it seems to me that the effects of any adverse publicity in this regard will be felt more potently in our sales effort. The implication that asbestos fibers may be placed in the air and serve as a pollutant as a result of asbestos-bearing brake linings disintegrating, or asbestos-bearing floor tile being disintegrated, might just as easily be extended to imply that A/C pipe may release a few fibers that could be water borne and ingested by a human being.

To combat this sort of publicity, the overall industry will have to combine forces and establish a case history record file that will disprove such claims. It seems to me that it is beyond the financial and personnel capabilities of any one company to tackle such a problem alone. We should rely on the work that has been established and proven thus far and cooperate with allied industrial interests along those lines that are legally, logically, and morally open to us.

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Ambler Pipe Admin.

Mr. M. S. Davis

Industrial Hygiene Foundation
Meeting, October 18 & 19, 1966

Ambler Safety

November 2, 1966

L. D. Horowitz - ap

The primary reason for attending this meeting was to hear Dr. Gross' paper "The Pulmonary Reactions to Man's Environment". A copy of his paper is attached to this report. Dr. Gross is Director of the Research Program that the Industrial Hygiene Foundation has started on the relationship of asbestos and fiber glass to lung damage.

On pages 7, 8 and 9 he refers to experiments where he has produced the so-called "curious bodies" in laboratory animals by introduction of silicon carbide into their lungs. He suggests therefore that these "curious bodies" which other authorities have called "asbestos bodies" can be formed without the presence of asbestos dust.

In a conversation with Dr. Jan Lieben, Director of the Pennsylvania Division of Occupational Health, he informed me that his investigations have uncovered a disproportionate number of mesotheliomas among insulation workers as well as their families in the Norristown and Philadelphia areas. You may recall that mesothelioma is a type of cancer which some authorities say can be caused by asbestos dust among other possible sources. Fortunately he did not incriminate our industry, but this could be forthcoming considering the probing that his department is doing.

I met with Dr. Smith of Johns-Manville who informed me of a recent meeting with the Public Health Service in Washington, D. C. concerning a proposed study by New York University of the relationship between fiber glass and lung cancer. I believe Gustin-Bacon was represented at this meeting.

Att.

Ambler Pipe Admin.

October 30, 1967

Ambler Safety

Mr. A. E. Alpine

see below

L. D. Horowitz - ap

Subject: Report on Bioeffects of Asbestos at Industrial Hygiene Foundation Meeting
Mellon Institute - October 11, 1967

cc: Mr. M. S. Davis - Ambler

The paper entitled "Asbestos Bodies and Bioeffects - A Detective Story" given by Dr. John M. G. Davis of the Asbestos Research Council in England should do much to reduce the emotional atmosphere surrounding this subject.

The paper in brief covered the following:

Asbestos is the general word covering specific types. The basic four types used are as follows:

- Si M. uses 10-15% crocidolite*
- Crocidolite - Blue fiber, mined in South Africa, makes up about 20% of fiber used in asbestos-cement pipe manufacture.
 - Chrysotile - Mostly from Canada and South Africa, makes up the rest of fiber used in asbestos-cement pipe manufacture.
 - Amosite - From South Africa.
 - Anthophyllite - Not very important.

Si M. uses 10-15% crocidolite
5-10% chrysotile
white but decided to go back
Hatchcroft
Saw this in the JM's recent
supplying stock
R+D B&G
1/9/68

Asbestosis, which is a fibrosis condition in the lungs, is associated with all asbestos types and is a disease of the asbestos industry and is a function of the exposure, i.e. high dust exposure and length of time will produce the disease.

Bronchial Carcinoma results from cigarette smoking and is also dose related for asbestos workers exposed to all types of asbestos.

Mesothelioma, a rare tumor, affects the cells lining the chest or the abdominal cavity. It was associated in South Africa with Crocidolite (Blue Asbestos), and this paper will show that it is not associated with any other asbestos type.

Historical Information

Before 1918 - Very little was reported on the health aspects of asbestos.

- 1924 - Cook reported curious bodies in lungs. Slides showed what was to become a classic description of bodies in the lung associated with asbestos - a brown color and clubbed ends of a long body and the body of the particle segmented sometimes.

October 30, 1967

- 1929 - Bodies in lung associated with asbestos and first called Asbestos Bodies.
- 1932 - Suggested that these bodies with central core and protective brown coating be called Asbestos Bodies.
- 1960 - Wagner in South Africa reported Mesothelioma associated with exposure to Crocidilite (did not occur in Amosite or Chrysotile areas). Many were not even industrially exposed although they lived in the mining area - some for only a short time and some only as children. Therefore, non-industrial exposure suggested to result in an epidemic Mesothelioma.
- 1963 - Thomson found 35% of urban Miami population had "asbestos bodies" in lung on autopsy.
- 1965 - Gross found over 40% of Pittsburgh population has similar "asbestos bodies".

These studies received much publicity. They suggested a possibility of an epidemic even though there were only 500 cases of all Mesotheliomas reported in the world up to that time.

There was not enough information available to come to such conclusions and some information was being ignored.

For one thing, only Crocidilite (and not any other type of asbestos) has produced Mesotheliomas; therefore, we really have a "Crocidilite Scare" - not an asbestos scare.

Also South Africa roads are surfaced with Crocidilite and children played around mine dumps resulting in a small exposure but greater than the general population.

Asbestos bodies are not specific for asbestos and they could form around other fibrous dusts.

Pseudo asbestos bodies have been produced at Cambridge, England and University of Pittsburgh around aluminum silicate, glass fibers, silicon carbide, etc. All look like asbestos bodies under the electron microscope with a ferritin or hemocidin coating and clubbed ends with segmentation.

Dr. Gross suggested that these be called "ferruginous bodies" because of the iron coating.

Ferruginous bodies in the lungs of the general public cannot be associated with asbestos unless positively identified under electron microscope.

This paper will be published in the Journal of Environmental Medicine in the near future.