

FILE NAME: RT Vanderbilt (RTV)

DATE: 1991 Oct 31

DOC#: RTV247

DOCUMENT DESCRIPTION: Legal - Deposition of Thomas G. Rogers



B-PROP-13

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ST. LAWRENCE

THOMAS G. ROGERS AND
FAITH ROGERS,

Plaintiffs,

VS

R.T. VANDERBILT CO., INCORPORATED,
GOUVERNEUR TALC CO., INCORPORATED,
ST. JOE MINERALS CORP. AND FLUOR CORP.,

Defendants.

Deposition of THOMAS G. ROGERS, taken on
October 31, 1991, at the Law Offices of
Setright, Ciabotti & Longstreet, Counselors at Law,
313 Montgomery Street, Syracuse, New York 13202

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

For the Plaintiffs: SETRIGHT CIABOTTI & LONGSTREET
313 Montgomery Street
Syracuse, New York 13202
BY: JOHN C. SETRIGHT, ESQ.

For the Defendants: SUGARMAN, WALLACE, MANHEIM
(Gouverneur Talc & SCHOENWALD
Co., Inc.) 499 South Warren Street
Syracuse, New York 13202
BY: SAMUEL M. VULCANO, ESQ.
LAURA ALDERMAN, ESQ.
(Observing)

For the Defendants: MACKENZIE, SMITH, LEWIS, MICHELL
(St. Joe Minerals & HUGHES
Corporation & 600 Onondaga Savings Bank
Fluor Corp.) Syracuse, New York 13202
BY: BARNEY BILELLO, ESQ.

Also present: Faith Rogers

CORPORATE REPORTERS, INC.
1 Madison Boulevard * P.O. Box 572
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(315) 697-5211

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I N D E X

WITNESS:

THOMAS ROGERS

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SETRIGHT - ROGERS

(It was stipulated by and between counsel for the respective parties that this Examination Before Trial be held pursuant to the provisions of the Civil Practice Law and Rules, that the signing and filing of the minutes are waived, that the witness may be sworn by Terri A. Sgroi, Notary Public, and that all objections, except those as to form, are NOT reserved until the time of trial.)

THOMAS G. ROGERS, called as a witness, having been duly sworn, testifies as follows:

EXAMINATION BY

MR. SETRIGHT:

Q Okay. Now I'll sit over here so you can get my voice. Okay. Tom, would you tell when you were born?

A Born July 29th, 1934.

Q So, you're now how would, fifty-seven?

A Fifty-seven.

Q And where did you grow up?

A Well, I was born in Theresa.

Q Theresa, T-H-E-R-E-S-A?

A Right.

Q Which is up --

A Well, it's the Town of Theresa. It's up --

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Q How far away?

A North of Watertown, yeah, on 37 towards the Seaway there, Alexandria Bay.

Q Towards the Seaway. So, is it east of Gouverneur?

MS. ROGERS: North and west.

Q It's further north than Gouverneur is?

MS. ROGERS: No, I think it's south.

Q Doesn't make a difference. How far away is Gouverneur?

A From Theresa?

Q Yeah.

A Oh, probably 20 miles.

Q And you grew up in a family setting?

A Right.

Q What did your father do?

A Farmer.

Q And did you do a little farming as you were growing up?

A Well, yeah.

Q How many brothers and sisters did you have?

A Twelve.

Q Twelve. And what was the health of your brothers and sisters?

A All good. I had one brother die but that wasn't

SETRIGHT - ROGERS

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due to a health -- he got a pitch fork aside the head.

Q But all thirteen of you were in good health?

A Yeah.

Q Or was there twelve?

A Thirteen, I guess.

Q Thirteen, it's a funny place to stop, isn't it?
Should have stopped before, probably. Anyway, how far did
you get in school?

A Tenth, I think it was the tenth.

Q Tenth grade?

A I think so, yeah.

Q How old were you when you quit school?

A Sixteen.

Q Sixteen. And what did you do then?

A On the farm again.

Q Before, were you helping your father on his farm?

A No, I left home and went to work up on Evans Mill.

Q That's also near Gouverneur?

A Between Gouverneur and Watertown.

Q All right. And what kind of a farm was it?

A Dairy farm.

Q Dairy farm. Is that what most of the agriculture
is up there, dairy?

A Right, yep.

SETRIGHT - ROGERS

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Q And how long did you do that?

A Until I was eighteen, that would be two years.

Q So, that was work mostly outside?

A Right.

Q Were you exposed to anything but clean air as far as you know?

A Not as far as I know, no.

Q Then where did you go to work?

A Oh, here and there I did a little of everything, then for nothing. Anything to make a dollar, I guess, at that time; a little construction.

Q Well, I know your wife's got a better memory than you do for these things, but you worked when you were about 22, I guess, for Groverton Paper. Do you remember that?

A Yeah, I worked there for awhile. That was right after we married, wasn't it?

MS. ROGERS: Well, after Vicky was born, yeah.

Q And you were about 22. How old were you when you got married?

A Eighteen.

Q Okay. And what did you do in the paper -- Groverton Paper?

SETRIGHT - ROGERS

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A I was a fifth hand. That's just a laborer, in other words.

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Q Okay. Did they have dust in that area, in that place?

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A Not much of anything I ever seen, not where I was anyhow. I wasn't on the machine or nothing.

7

8

Q You weren't on the machines.

9

A (Witness indicates.)

10

Q What kind of a labor work was it?

11

A Rolls come off these big machines and they'd mark them and I'd put them on a two-wheel car, take them either to a rail car or take them upstairs to the plant.

12

13

Q Was the paper mill just a winter job?

14

A No. Well, when I first went, no, it was -- it wasn't steady, but it was -- it wasn't a winter job until I got working for this tree company.

15

16

Q What tree company was that?

17

A Davie Tree Company.

18

Q So, that obviously was seasonal?

19

A Right.

20

Q How long did you work seasonally for the --

21

A I think seven years.

22

Q Back up to about '61. Something like that?

23

A Approximately would be, yeah.

24

25

Q And what kind of work did you do for Davie Tree?

A I started out as a laborer, I worked three years as a laborer, and then I made foreman for the other four years I worked for them.

Q What kind of work was it?

A It was trimming power lines, you know, cutting rightaways for power lines and spraying brush, stuff like that, trimming trees for the telephone companies.

Q What did you spray the brush with?

A They had some kind of a mixture, I don't know what it was. It would kill brush, supposed to.

Q As far as you know, were you exposed to any kind of stuff you inhaled, substance?

A No, not there you don't, no, because it was mixed with water.

Q And you were outside all the time?

A Right, oh, yeah, I was out.

Q And I see you went to work for Antwerp Roofing Company for awhile?

A Right.

Q And what kind of roofing was that?

A That was a built up flat roof.

Q Built up flat roof?

A Yeah, mostly flat roofs, whether you put on stone

SETRIGHT - ROGERS

insulation, tar and stone.

Q That's what you mean when you build it up, layers?

A Right.

Q And obviously, that was outside work?

A Right, of course, I was a laborer, so I did the hard work.

Q And how long did you do that?

A I can't remember. It was a short time, it wasn't very long.

Q No more than a year or so?

A I don't think it was all that total, everything.

Q Then you went to work around 1961 for Hamilton Bakery. Do you remember that?

A Yeah, I was driving a route truck.

Q Okay. And so all you're doing is delivering bakery goods?

A Yeah.

Q Then you went to work for Sprague and Henwood. What are they?

A They're a diamond drill, core drilling. They sample drill for the mines, like where I was, it was for these missile bases when they first came out, they were core sampling for them.

Q They were looking for a place to build missile

bases?

A They were going to build silos.

Q Silos to hold missiles?

A It was a short job, ten hours a day. They had to get them done quick, so that was real temporary, that wasn't too long.

Q Again, that was outside?

A Right.

Q Were you exposed to any kind of substance flying around that you could see?

A Nope.

Q Or notice. And then when did you go to work for Gouverneur Talc?

A April of '63.

Q Okay. And you say you got -- let me see. April of '63, you would have been 29 years old, I guess, huh? I'm doing arithmetic so I guess that's right. It would have been -- so you'd been married about 11 years, you got married when you were 18. Did you have any children since then?

MS. ROGERS: Two.

A Two.

Q How many have you had?

A Two.

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Q How old are those kids now, while we're talking about them?

A One is 36 and 32.

Q Are they in good health?

A Yeah.

Q Do they have children, either one of them?

A Um-hum.

Q Are your grandchildren in good health?

A Yep.

Q And your wife, Faith, is she in good health as far as you know?

A As far as I know.

Q And I've forgotten whether I asked this. When did your father die?

A He died in '62.

MS. ROGERS: I think it was '62.

Q '62. What did he die of?

A Throat cancer.

Q And did he have a history of smoking?

A Oh, yeah.

Q What do you mean by oh?

A He smoked a lot.

Q Heavy smoker?

A Wicked.

SETRIGHT - ROGERS

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Q Were you a smoker up to near the time he died?

A Yes.

Q How heavy a smoker were you back then?

A Maybe a pack a day.

Q Pack a day. And did you quit smoking when he died?

A I quit shortly -- right after he died.

Q Cold turkey?

A Right.

Q For obvious reasons?

A Um-hum.

Q Okay. And have you smoked since?

A Nope.

Q Hadn't smoked anything?

A Nothing.

Q Have you got any bad habit?

A Not any more.

Q Not any more, huh. And how about your twelve brothers and sisters, how many of them are still alive?

A All of them except the one that died, I told you had a pitch fork.

Q Yeah, but you've told Sam and the rest of us -- oh, you did tell me --

MR. VULCANO: Yep.

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SETRIGHT - ROGERS

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2 A Yep.

3 Q They're all alive, huh, except for the one with
4 the pitch fork?

5 A I had one in Rochester that had a heart problem, I
6 don't know what it was.

7 Q But it's a male, a guy?

8 A Yeah.

9 Q Is he still living?

10 A Yeah, he works for Xerox.

11 Q Still working?

12 A Oh, yeah, working.

13 Q Did the rest of your family get out of the north
14 country?

15 A Nope, he's the only one. He left when he was 18.
16 He left when he got out of school.

17 Q He's the only one. Now, when you went to work for
18 Gouverneur Talc back in April of '63, what job did you
19 first have?

20 A Laborer.

21 Q And what did that -- being a laborer, what did you
22 do?

23 A Well, anything from helping the maintenance
24 mechanic to ditching, working in the ditch.

25 Q Was this above-ground?

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A Some above, some below.

Q And when you were working below-ground, were you working in a particular mine?

A Yeah, Number 1.

Q Number 1. And where was that?

A That's right there at Balmat.

Q Right there at Balmat?

A Right.

Q Okay. Maybe you could describe to me, Tom, how they go about developing a mine.

MR. VULCANO: Objection.

A You're talking right from surface down?

Q Yeah, start from scratch.

A Well, start from scratch. They have to drive a -- well, it could be a shaft straight down in our particular area, straight down shaft. Well, now, at the time I went to work there, it was down 700 feet, it was straight down and whatever levels they want 500, 300, 700 they cut out from the shaft.

Q Cut out horizontally?

A They cut out, make it into -- or start drifting or start driving the drift with the ore body.

Q You mean you go where the ore body goes?

A They follow the ore bodies.

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2 Q That's what you mean by drifting?

3 A Yeah, they drift in through the rock and then they
4 do that on every level, wherever they want a level.
5 Generally 200 feet between levels.

6 Q Is that so you -- the thing doesn't cave in?

7 A Yeah, I imagine mostly, yeah, right, because then
8 they -- in a way, yes, and in a way, no, because they get
9 their ore between these levels 300 and 500 and the ore is
10 between three and five. They always drive the ore between
11 the drives.

12 Q So, you're always driving up?

13 A You're always driving up on each level and they
14 keep following these ore bodies to whatever ore they want.

15 Q These ore veins, whatever you want to call it --

16 A Yeah, ore veins, and they bank over to whichever
17 way it goes.

18 Q How do they get the ore out of the beam?

19 A When they're driving the drift, they drive the
20 drift with an Eimco.

21 Q What is that, E-N-C-O?

22 A It's similar to -- E-I-M-C-O. It's similar to a
23 front loader, they put a rail in as they go.

24 Q In this drift?

25 A Yeah, the drift and they put that ore out in a

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car, dump it out and put it into a transfer and it goes to a 700 hundred foot level where the crusher is located.

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Q Crusher is to crush the big chunks of ore that the front end loader, the Eimco is transported to the crusher?

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A Then as they go, as they come to a vein of ore, they want to come to -- they put in a ramp and they cut out like the branches which are off right or left. They cut out what they call a station. They set a crusher up there and they build a ramp across the drift that they already drove and then they start right out wherever that ore body goes and they scrape that out of there onto this ramp, it's got a hole in the middle into the cars.

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Q The cars are underneath?

A The cars are underneath.

Q Those are eventually railroad cars?

A Right, and then they take it out to the transfer and dump it into the pocket, what they call the pocket, it goes down to 700.

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Q What's the pocket, where is that?

A That's out at the station, at the shaft.

Q Okay. At the shaft that was sunk you told us about?

A Yeah, the shaft where they run the cage or the

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skip, up and down it.

Q The skip is an elevator?

A Right, similar to the elevator.

Q That puts the ore up to the crusher?

A That goes to 700 and then they have a loading pocket there underneath that crusher and they put it into this elevator thing, they call it an elevator, it's a big bucket on top. They dump the ore into there and take it to the surface.

Q That's one. What word did you use, the slusher, that you drag the ore out of the vein?

A Out of the stope, right.

Q And what's the slusher, what's that like?

A The way to explain it, you seen anything similar to a dried line? You have a big bucket in there hooked to the slushers, there's a pull down and there's two pull backs.

Q So, you can pull it back in behind the pile of ore?

A Right.

Q And then pull it back out?

A Pull it back out.

Q By means of cables that are like a drag line?

A Right.

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Q And the slusher dumps it down --

A Nope, that brings it out to the hole into the car, into the loading position where the cars are sitting.

Q Okay. Now, you have told us about you being a laborer and sometimes you'd get down into the mine, Number 1 Mine, how long were you a laborer?

A Wasn't very long. I don't know, maybe a year or two at the most. I'm not sure about the date but it wasn't long.

Q Okay. Then what did you do?

A Well, then I was going to be a maintenance mechanic, so I was going through a training program to become a maintenance mechanic. I was what they call a repairman, laborer from repairman.

Q Repair equipment and stuff?

A Right, repair equipment and set these slushers and put down rail or build the ramps, whatever.

Q So, that is mostly underground?

A Yeah, most of it was underground.

Q And did you become a mechanic?

A Yeah, I did, for awhile.

Q Short while?

A Yep, not too long.

Q Then what did you do?

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A I'm on as an underground stock clerk to get into being a trammer. I had to go through that route to make it.

Q Why did you want to stop being a mechanic and get to being a trammer?

A At the time I was a mechanic, we was working two, three nights over and holidays and half the time, Sundays and I set there and watched the production crew go out of there at 3:00 and making more money than I was, so I said I was going to be a trammer.

Q A trammer. I take it it is part of the production crew?

A Right.

Q What does a trammer do?

A The trammer goes into the stopes, get the ore, brings it out and dumps it into the slusher to the crusher on level seven.

Q So, the trammer works the slusher, the drag line?

A Oh, yes, yeah.

Q And that's what you'd do as long as you were down there is work this drag line, this slusher?

A No, there was three things.

Q Three things okay. Go ahead.

A You either run the Eimco, if they call, and

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depends on where the ore come from. Someone had to be a motor operator plus a scraper man that's running the slusher.

Q Scraper man runs the slusher, okay. And as a trammer, you did any one of those three jobs?

A Right.

Q Okay. And that is all below-ground?

A Um-hum.

Q Now, when was it you would -- how long after you first went to work at Gouverneur in April of '63 was it that you became a trammer? Just give me an estimate.

A It was probably three, maybe three years.

Q Did you work the whole shift as a trammer below-ground in the mine?

A Right, yes.

Q You were right in there where the ore was being moved around?

A Right.

Q And was it dusty? Tell me about that.

A Yeah, it was real dusty when we were scrapping mostly it was that and it was dusty in any area down there really.

Q Let me ask you this: When you had -- how long did you take for lunch?

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A Half hour.

Q How were you paid? What was the pay structure?

A Well, we worked on an hourly rate plus production, bonus per tonage on top of our hourly rate.

Q How did they figure how much tonage? Did they weigh it somewhere along the line?

A Well, as they lifted it, it was weighed and went over to the mills, that's how we got paid on it.

Q That's how they knew?

A Right, on the tonage, they had a scale on the conveyor belt and that's how they knew the amount of tonage going over and they gave us so many cents a tonage above our hourly wage.

Q Was it the faster you worked, the more tonage or how did that work?

A Well, yes and no. It depended on orders, if the order was up where they needed a lot of ore, then you'd have to get a lot more out. They'd ship a lot more. See, they had storage areas in these pockets that goes to the crusher, so you could still tram your ore even if they didn't take it, but if they had big orders, you'd make good money because the more they lifted the more you made.

Q But if they put it in the pockets, it didn't get weighed yet?

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A No, it didn't.

Q So, you weren't getting any bonus?

A Not what was laying in the pocket, but you would sooner or later because they had to lift it, hoist it.

Q Sooner or later, because if you put it in the pocket sooner or later it would have to get on the scale?

A Um-hum.

Q Where was this -- was there a crusher underground?

A Right on the 700 foot level.

Q What did the crusher consist of? I mean, how did it work?

A It's a big machine, got two jaws in it and they just go back and forth.

Q Go back and forth horizontally?

A Right, and as the ore goes in, it breaks it to a certain size.

Q And as I understand it, there's another crusher on the surface?

A Secondary on the surface.

Q Crushes it smaller?

A A lot smaller.

Q Were you working in the area of the crusher as well?

A A lot of times. See, that crusher job was

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considered a trammer's job, too, so at times you was on that crusher.

Q And that would make dust, too?

A Oh, yeah, that made quite a lot. It made a lot of it down there. Later years they built a thing to get into kind of stay out of it a bit.

Q When you were running the crusher?

A Crusher, right.

Q What did they do?

A It was a little cage to go into.

Q Like a cab on a tractor?

A Similar, to get out.

Q Did it help?

A Some maybe.

Q Was it dusty inside of the cab?

A Oh, yeah, it's opened.

Q Oh, the front of it's opened?

A Oh, yeah, you just --

Q We had some masks --

MR. SETRIGHT: Is that what you've been calling them --

MR. VULCANO: Yeah, I think we have.

Q -- that were marked at somebody else's deposition.
Did you use any masks like the ones we see what has been

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marked?

MR. VULCANO: Go off the record for one second, Jack.

(Discussion off the record)

Q So, back on the record, Tom, showing you Exhibit 3 here's a couple of masks. Did you wear any masks?

A I wore a mask similar to this.

Q Similar to the one that's smooth instead of having a net over it?

A Right, didn't have no warning signs on it when I was there.

Q Did you wear it all the time?

A No, not all the time.

Q What was the rule the company made about masks?

MR. VULCANO: Objection. If we could just get a time frame, Jack.

Q Well, when did you first start using masks? You went to work there in '63?

A Practically from the time I was on trammer, that's when I would say is when I started using any of these.

Q From the time you started being a trammer, which I think you said was two or three years after you started work?

A Yes.

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Q And did the company have a rule about the use of the masks back then?

A No, not that rule, all they had was if you were in a dusty area, you had to use this little mask that was supposed to be legally used.

Q And you weren't told you had to use it?

A No.

Q Was it up to you?

A Right.

Q Back then when you first started being a trammer, how much of the time would you use -- would you work with the mask on?

A It's hard to say, depending on what you had been doing that day. Say you done them three different things, a lot of times the Eimco there's no dust. At certain times, sometimes there's a scraper, but if there's dust, you have to use them.

Q Did you have to use them at all times when there was more dust?

A Tried to, yes.

Q What kept you from using them at all times?

A Well, depends on what you was doing. If you was doing hard work, you just couldn't breath through them.

Q I see. Because you want to take in more air and

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1
2 you couldn't get it through them?

3 A Right. Through these things here.

4 Q Did those things fill up with dust after awhile?

5 A They turned completely black, I don't know --

6 Q Did they?

7 A Yeah, they turn, because if you're running the
8 slusher, you get a certain amount of smoke off the bands
9 like a brake band and they turn black.

10 Q You don't know why they turned black?

11 A I'm just guessing, I don't know.

12 Q You're just guessing. And did they become less
13 efficient as the day went on?

14 A Yeah, but they had -- we always carried extras,
15 because it's what they called a throwaway. They
16 considered them a throwaway.

17 Q Similar to the smooth white one on Exhibit 3 is a
18 throwaway?

19 A Right. And whenever you want to change it you
20 just change. And I wouldn't -- because they get all wet,
21 you know, after you use them, so when they did, I wouldn't
22 put them back on, you throw them away and get another one.

23 Q They get wet from your own breath?

24 A Right. And the cold underground.

25 Q How cold is it down there?

SETRIGHT - ROGERS

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2 A About 47, pretty close, year-round until the cave
3 in, cave in on the 300 level, when it caved in, then it
4 turned wicked cold on the 500 level.

5 Q I see what you mean, because then you're only two
6 to three hundred foot below the surface?

7 A Yeah, and the ore screwed up the mines and it
8 screwed it up more, the main draft, it froze ice on it
9 after the cave in on the surface.

10 Q When was the cave in?

11 A I don't remember the date it caved in.

12 Q I don't want the date, but how many years had you
13 been working, about?

14 A Oh, that was in the later part of the years. It
15 was probably four or five years before I got done, I guess
16 maybe less. Three years.

17 Q Before you got through working?

18 A Before I got through working.

19 Q And up to let's say 1988, over the years, did you
20 work steady?

21 A Yes, except when I got hurt.

22 Q I forgot to ask you when we were talking upstairs,
23 but have you got tax returns back that far, Tom, or --

24 MS. ROGERS: Most of them.

25 Q I don't think we ever got them from you, did we,

SETRIGHT - ROGERS

1
2 Faith?

3 MS. ROGERS: No.

4 Q Why don't you send us what you can find, back as
5 far as you can go.

6 MR. SETRIGHT: Well, how far back do you want
7 to go? '84 or something like that?

8 MR. VULCANO: That'd be fine.

9 Q See what you can come up with and send them down
10 and I'll send them back when I copy them.

11 MS. ROGERS: Okay.

12 Q About how much money were you making in the early
13 eighties and middle eighties, Tom?

14 A Probably twenty, twenty-five thousand.

15 Q Was the work steady?

16 A Yes.

17 Q What else was going on up there in the north
18 country, work-wise, back in the eighties and the sixties
19 and the seventies?

20 A Nothing much. You're either going to be in a
21 little construction or paper mills or there's a couple of
22 them around there and iron works, that's about it.

23 Q And did any of those jobs pay like being in the
24 mine?

25 A No, no, never had.

SETRIGHT - ROGERS

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Q So, is that what kept you down there, the pay?

A Yep, biggest thing, biggest pay and the benefits.

Q And did the Gouverneur Talc, your employer, give you physical exams periodically?

A Yes.

Q Not every year?

A No, year to two years. They had -- they varied one to two years, sometimes you'd miss one.

Q You wouldn't miss more than one year?

A No, no, they was --

Q So, at least every two years, is that what you think?

A I would say at least every two years.

Q Did they give you a chest x-ray?

A Yep.

Q And did you ever -- were you ever told you had any -- there was anything on your x-rays?

A Nope.

Q How did it work? Did they tell you anything? No news is good news or what?

A Oh, they take you over after the x-rays and they had a consultation with you and the doctor's assistant is going to show you on there that there is nothing alarming, nothing to worry about.

SETRIGHT - ROGERS

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2 Q So, you never knew you had any trouble?

3 MR. VULCANO: Objection to the last question.

4 A Not according to their record I didn't.

5 Q When was it that you discovered something
6 different about yourself?

7 A Well, it was before I really realized anything
8 was, shortly before I was -- probably in June, maybe, of
9 '88.

10 Q Okay. What did you notice about yourself?

11 A All of a sudden, I just couldn't breath, period.
12 I mean, I just --

13 Q Were you still working?

14 A Yes.

15 Q And so, when you noticed all of a sudden you
16 couldn't breath, what did you do about it?

17 A Well, she was hollering go to another doctor and I
18 said I would wait because the company physicals were due
19 shortly.

20 Q What doctor had you been going to?

21 A I hadn't had any real doctor except -- I had
22 Dr. Ebbels in Watertown there, for stomach problems.

23 Q Ebbels?

24 A Bruce Ebbels. He's out of business now, but.

25 Q That was a stomach problem. What was that?

SETRIGHT - ROGERS

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A I had an irritable colon.

Q Did he take care of that?

A Yeah.

Q Now, while I'm asking about that, what other health problems did you have up to June of '88?

A None that I know of.

Q Okay. You did -- I think you told me you hurt your foot or something?

A Well, I got my foot broke in the mines.

Q Did that keep you out of work for awhile?

A Seven months.

Q Did you work steady after that?

A Right.

Q And as far as being able to work, did your foot work okay after you got back to work?

A Yeah, well, except for I lost some of the bend on it, motion, that's all.

Q But you worked a full shift?

A Yeah, yeah, I worked.

Q Okay. And then did you -- did the company give you a physical before you went to Dr. Loewen?

A Yeah, yeah, it's the one I waited for.

Q Was that somewhere around in June or something?

MS. ROGERS: May.

SETRIGHT - ROGERS

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A May, June, right. In there somewhere.

3

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Q All right. And did they -- did you have a consultation with the company doctor after that?

5

6

A Yeah, later, just before we made the appointment with Dr. Loewen, I had the consultation with him.

7

Q When did you go to Dr. Loewen?

8

A July.

9

MS. ROGERS: July.

10

A July, I think it was.

11

12

Q Okay. You had the consultation with the company doctor before you went to Dr. Loewen?

13

14

A Right. She was going to make an appointment and I told her I would wait to talk to him.

15

16

MR. VULCANO: Can we identify which doctor he's talking about?

17

A Doctor Fung.

18

19

Q Fung, F-U-N-G, he was the company doctor at that time?

20

A Right.

21

22

Q And did you have a consultation with him before you went to Dr. Loewen in July of '88?

23

A Right.

24

Q What did he tell you?

25

A Nothing. Said everything looked all right.

SETRIGHT - ROGERS

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Q Okay. But at that time, you were having shortness of breath?

A Oh, I guess so. I took that breathing test down in Gouverneur before they let me out of there.

Q Down to Gouverneur?

A At the hospital.

Q Oh, was this --

A This is prior to when I went to Dr. Loewen. Just before.

Q How did you get to the Gouverneur Hospital, why did you go?

A Gouverneur is where they took us.

Q Oh, the company?

A Right, this is a yearly physical.

Q You took a bunch of breathing tests?

A Right, yeah.

Q By Dr. Fung?

A Nothing alarming in them, he said, you can breath all right, he said.

Q Okay. Then you went to Dr. Loewen?

A Right, shortly after that, she made the appointment.

Q How did you have -- you or Faith, find out about Dr. Loewen?

A He had just come to Watertown from Buffalo starting to practice and his picture was in the paper and he was supposed to be for respiratory, you know, lung problems.

Q Okay. And that's how you got to him, by reading the paper and seeing he was a specialist for what you thought you had?

A Right, um-hum. Well, we tried to get Ogdensburg to Dr. Litman and Schuler but they would have nothing to do with it, they didn't want to take me for awhile and they said they would if they did and it went to Comp they would have nothing to do with it.

Q This is Litman?

A Litman and Schuler, I think it is. So, I wasn't going down there and have to go somewhere else.

Q So, you went to Dr. Loewen?

A I went to Dr. Loewen.

Q And did he keep following you for -- well, he has ever since, since up to the time you left, hasn't he?

A Right.

Q And the diagnosis was made -- took awhile didn't it, the diagnosis?

A Took a long time.

Q As I see, the medical records took over a year,

SETRIGHT - ROGERS

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didn't it?

A Yeah, total, right.

Q To narrow it down to what you had?

A Everything, right.

Q And what, do you know, was it that he finally figured out you had?

MR. VULCANO: Object.

A They told me that I had gotten in the lungs they call it asbestos now, but you call it what you want. Dr. Loewen found something wrong with my heart for some reason, and they went through all the tests in Watertown and they couldn't come up -- they knew what it was doing, but they couldn't figure out why, so he went to this research center in Iowa and they said, I've got asbestos on the heart, on the lining of the heart.

Q And then when did you last work, Tom?

A November 19th of '88.

Q Okay. And have you worked since?

A Nope.

Q Well, let me see. You said around June of '88 all of a sudden you noticed the shortness of breath. So, you worked four or five months until you finally quit. How were you getting along working?

A Not good, but the guys working with me done the --

a lot of the work.

Q They covered up for you?

A They covered up for me.

Q But then you finally had to --

A Well, Dr. Loewen finally told me I had to quit.

Q Get out of there?

A Yeah, that was it, November 19th, that's the night he called me.

Q And you haven't worked since?

A No.

Q Do you still have shortness of breath?

A Um-hum, a lot of lung pain.

Q A lot of lung pain?

A (Witness Indicates.)

Q Tell me about that.

A Well, if I try to do anything, even walk upgrade or anything, it just hurts just like -- like when you was a kid like how you overdone it when they push, I get that all the time.

Q Like you had to walk upstairs here, does that --

A If I go slow enough, I can get away with it.

Q But did you feel pain when you walked upstairs?

A No, I walked slow.

Q Besides working, did you get into any kind of

SETRIGHT - ROGERS

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2 physical exercise, hunting, fishing, playing sports?

3 A Oh, yeah, I love to hunt, fish and we did do
4 dancing too, but not anymore.

5 Q You don't do that anymore?

6 A It would have to be real slow if we did.

7 Q A slow dance. Isn't there a song like that?

8 A Yeah. I still try to hunt, but boy, I know it,
9 but I still try to. I mean, I go out for a couple three
10 hours.

11 MS. ROGERS: Sit and watch more or less.

12 A First four or five hundred yards are awful, but
13 then it seems to free up, of course. He says take Anacin,
14 so I take Anacin before I leave.

15 Q Anacin?

16 A That's the only thing for the physical pain.

17 Q But you go four or 500 hundred yards and it gets
18 better?

19 A It gets a little better, the pain let's up a
20 little bit. He says it's at that particular time that the
21 lungs are working at full capacity. When I'm doing
22 nothing and then you do something, that's where the pain
23 comes from.

24 Q You're trying to work harder and they won't work?

25 A Right.

SETRIGHT - ROGERS

MR. VULCANO: I'm going to object to the last answer, non-responsive insofar as to what Dr. Loewen said.

Q In other words, that's what you feel if you start to exercise, you get that pain?

A Oh, yeah.

Q Has it gotten any greater, the pain, in the last year, would you say?

A Greater?

Q Yeah.

A Oh, it's worse than it was.

Q I mean, is it progressing worse?

A Oh, yeah. .

Q And how about the shortness of breath?

A Well, that goes with it. It is better than it was when I got done from the mine, but that's at that particular time that I guess my lungs are full of fluid before.

Q And they somehow did something about that?

A Well, that is correct, they must have drained out. See, when I was working -- the more I worked, the more they filled, because my heart couldn't get -- let the blood through.

Q I get you.

SETRIGHT - ROGERS

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A So, that backed up into my lung --

MR. VULCANO: Objection, again, to the last answer, non-responsive.

A -- according to the heart specialist.

MR. VULCANO: And that.

Q Did you go to a heart doctor? Who was that?

A Dr. Willis.

Q Willis?

A And Millman.

Q Millman. They're partners. Did you go to any other doctors? You were examined on behalf of Gouverneur Talc or somebody else, by a Dr. David Davin?

A Davin.

Q Did you come down here?

A Right.

Q What did that exam consist of?

A Nothing -- oh, I went in, she was going to give me a preliminary.

Q You mean she, somebody --

A A nurse, right, I guess it was his nurse.

Q Who was in his office anyway?

A Right, in his office. She was going to give me a pulmonary. I took a couple breaths and got a little dizzy and said she wasn't going to give me any -- she said if he

SETRIGHT - ROGERS

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2 wants to give you a test, he'll do it, and in five minutes
3 they called me in where he was and he set me down on that
4 table and used a stethoscope. She come in and said
5 Dr. Davin, I didn't give him no tests. If you want it,
6 you have to give it to him. He said, no, I don't want to,
7 because he's hyperventilating right now. So, that's it, I
8 don't know.

9 Q How long was it that he was with you or you were
10 with him?

11 A Five minutes with him, probably.

12 Q How long with the nurse or whoever she was?

13 A Altogether, five.

14 Q Now, do you remember at some time while you were
15 working at Gouverneur Talc when one of the people from
16 R.T. Vanderbilt Company in Connecticut came through?

17 A Yeah, I remember when he come through, Vanderbilt.

18 Q Do you know his name, his first name?

19 A Hugh, it was Hugh.

20 Q And when was this about?

21 A This had to be -- in the later part of the
22 eighties it was -- I think they was having a scare on
23 whether they were going to call it asbestos or not, that's
24 when he came through. So, they had us all over and had a
25 meeting in the carpenter shop, all the miners, and he said

SETRIGHT - ROGERS

1
2 he spent, I don't know, a million dollars or a hundred
3 thousand, something like that on fighting this and not to
4 worry, because if all else failed, he said he had a
5 senator and patted his back pocket. So, that's the way it
6 went.

7 Q This -- was he talking about this -- you said
8 scare about asbestos?

9 A Asbestos, right. They was going to define -- they
10 said it now for quite a few years they were going to make
11 a definition of asbestos or tremolite which is what
12 Gouverneur calls it. They say it's tremolite, but they
13 had the scare that if it went to asbestos, they were going
14 to shut the mines, if they had to label the bags, and
15 that's why he was there for it.

16 Q And that -- was it in that context he made those
17 statements you already recited?

18 MR. VULCANO: Objection.

19 A Right, he made them in that same period, right.

20 Q And over the years -- let me withdraw that half a
21 question.

22 Did you -- were you asked to take air samples over
23 the years?

24 A Air samples?

25 Q Well, material samples?

SETRIGHT - ROGERS

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2 A Oh, yeah, yeah, they would give us the bags,
3 sample bags, to go in certain areas wherever they wanted
4 us to get it and bring it out to the station.

5 Q Do you know the purpose of those samples?

6 A There's no way I can prove I'm wrong, but common
7 knowledge --

8 MR. VULCANO: Objection.

9 A It was common knowledge among the people. They
10 knew where it was supposed to be going. There's no way
11 they could prove it, that they were having -- if you go
12 get certain samples in certain places there was nothing
13 there. We knew there was nothing there, because we worked
14 there.

15 Q You mean there was no dust there?

16 MR. VULCANO: Objection.

17 A Not saying dust, but saying it was getting -- we
18 knew they were getting it for purposes to find out whether
19 it was asbestos or not for fiber.

20 Q I see.

21 A And then other times you get samples, went across
22 the road to the laboratory, but you got them out of the
23 working areas where you had been working or had worked and
24 they was marked whatever stope or area you got them from
25 and they went across to the lab.

SETRIGHT - ROGERS

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2 Q Did you know the purpose of getting those samples
3 right in the area where you worked to go across the road
4 on the surface to the lab?

5 A Right, I knew where they were going.

6 Q And you know what they were for, didn't you? What
7 were they for?

8 A They were for the different grade of ore we were
9 in. Depends on what they wanted to make. Like they had a
10 hard ceramic ore, it was a different grade of ore.

11 Q You had different grades of ore. Did they have to
12 figure out where the different grades of ore were?

13 A Well, the lab -- the lab knew what they wanted, so
14 that in the mine department, over on our side would know
15 what stopes had this or what they wanted.

16 Q And then the mine department would know by
17 checking with the lab what different grades were, what the
18 different grades were, and the mine department knew where
19 those different grade samples came from?

20 A Oh, yeah.

21 Q Okay. And then when you get an order, would the
22 order specify a specific grade or product maybe?

23 MR. VULCANO: Objection.

24 Q If you know. Maybe this is going beyond your
25 knowledge, I don't know.

SETRIGHT - ROGERS

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A No, no, all I know is they just told us to go get it, I mean.

Q All right.

A I don't know.

Q And on these other occasions, when it wasn't going to the lab, did you know when you were told to take samples, the samples on any particular day you were taking, were not going to the lab?

MR. VULCANO: Objection.

A We -- I knew they weren't going, but I had no way of proving it, it's just common knowledge, I mean.

Q And was there any -- was there ever a time when you were told by your boss -- who told you to go get samples?

A General foreman, shift foreman.

Q And did the shift foreman always tell you where to go to get the sample?

A Yep.

Q Was there ever a time he told you to go get a sample anyplace you want?

A Yeah, if you want a sample out of the stopes as you was drawing, they'd tell you to go get them there.

Q They didn't specify an area, just the stopes you were working on?

SETRIGHT - ROGERS

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2 A Yeah, wherever you were going to draw.

3 Q And I take from that that there is different
4 grades of this Talc ore?

5 A Right. There are different grades, so it depends
6 on what the mill wanted.

7 Q And the mill would mill what they had orders for?

8 A Right.

9 MR. VULCANO: Objection to the last question.

10 Q Were there times when there weren't any orders but
11 you kept on mining and stockpiled it?

12 A Yes, there has been.

13 MR. VULCANO: Objection again. Just so you
14 know, I'm objecting on foundation grounds. Maybe
15 I can just say that and I won't have to keep
16 sticking my nose into it. I'm not sure whether or
17 not Mr. Rogers knows this stuff.

18 MR. SETRIGHT: Yeah, well, we'll find out.

19 Q Were there times when you were mining ore and it
20 didn't go right to the surface?

21 A Yes, if they didn't have the orders at times
22 slowed down, we'd just fill the transfers.

23 Q The transfers, what are they?

24 A They're like holding pockets for the ore in the
25 mine before it gets to the crusher.

SETRIGHT - ROGERS

Q Before it gets to the crusher -- that's in the mine?

A Right, 200 foot -- like from five -- well, I particularly was on the 500 foot level mostly, so between five and seven, they had a big, they drove a big tunnel like straight down and that's what held it.

Q And you throw it in there?

A Right. And they draw off of it as they needed it.

Q As the orders later came in?

A Um-hum.

Q So, the stuff you put in the pockets, you wouldn't have got a bonus for because it hadn't been weighed yet, is that right?

MR. VULCANO: Objection.

A Right.

Q But sooner or later you would get it if they used it?

MR. VULCANO: Objection.

A Oh, yeah.

Q I've got a note here. Do you have some gouty arthritis once in awhile?

A Gout? Yeah, they call it gout.

Q Did they give you medication that controlled it?

A Oh, yeah, right. They called that the rich man's

SETRIGHT - ROGERS

disease.

Q That's a myth.

A You know.

Q Well, since Dr. Loewen's been gone, have you been going to his partner?

A No, I went to Dr. Loewen just before I left and he advised me to stay with his partner. He said he was a good man, but now I have got to go see him well, sometime within this year.

Q What's his name, Rechlin?

MS. ROGERS: Rechlin.

MR. SETRIGHT: R-E-C-H-L-I-N, right?

MS. ROGERS: Yes, sir.

Q So, you've got to go see him?

A Right. I've got to see him because he's got to have x-rays every year.

Q So --

A Check to see if it's any worse or not.

Q You talked about Anacin, Tom, which you take. Do you have to take any other kinds of medication?

A Yeah, heart pills.

Q Do you know what they are?

A Cardizem.

Q Cardizem?

SETRIGHT - ROGERS

A Cardizem, and of course the aspirin a day. I have to wear nitro patches all the time.

Q What's that? Some kind of a thing that --

A Keeps your blood thin and your heart relaxed, I guess, that's what that's for.

Q Nitroglycerin?

A I have to carry pills too.

Q You have to what?

A Carry my nitro pills too.

Q In case you get pain or something?

A Yeah.

Q How often do you feel you have to use the nitro pills?

A Depends on what I'm doing or if I got excited or what.

Q If you got excited, does that --

A Yeah, because the heart tries to increase. The heart works perfect when it's doing nothing, but if it tries to increase, then you get the heart pain, because it cannot function.

MR. VULCANO: Objection.

Q So, if you get excited when your heart beats faster, that's where there's a problem?

A That's, then you're in trouble.

VULCANO - ROGERS

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2 Q Well, at least since I've known you, you don't
3 impress me as being an excitable person, did you used to
4 be?

5 A Well, I'm calming down, I used to be, yeah, I'm
6 learning it's not worth it.

7 MR. SETRIGHT: Well, I think that's all,
8 thanks.

9 EXAMINATION BY

10 MR. VULCANO:

11 Q Mr. Rogers, I think you told us that working as a
12 trammer at Gouverneur Talc there were three or four
13 different operations you'd be involved in, is that true?

14 A Yes, 'cause it had to do with the trammer.

15 Q You'd run the Eimco sometimes, is that true?

16 A Right, right.

17 Q And you'd operate a locomotive sometimes?

18 A Right.

19 Q And you were a scraper man sometimes?

20 A Yep.

21 Q And sometimes if I understood you correctly, you
22 might have to work with the crusher, the underground
23 crusher?

24 A Right.

25 Q And you were a trammer for how long, sir, about?

VULCANO - ROGERS

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2 A About 22, approximately there, 22 years, somewhere
3 in there.

4 Q Can you give me a judgment as to how often you
5 would work with the crusher?

6 A That wasn't too often. The only time would be if
7 a guy didn't show up and if I didn't have enough time, I
8 would be pushed down there, you see. Generally, it went
9 by seniority.

10 Q So, at least your own personal experience as a
11 trammer you'd only work on the underground crusher if you
12 were filling in for someone who was sick or absent?

13 A Right, right.

14 Q And you'd only have to fill in on the crusher if
15 there wasn't this somebody with less seniority than you
16 available?

17 A Generally, once in awhile you'd have to. If they
18 said go, you went, but.

19 Q Would you work on the crusher once every year?

20 A Oh, more than that.

21 Q Once every six months?

22 A At least, probably, I would say.

23 Q Now, how about the other trammer functions that
24 you mentioned. If you're -- I'm talking about your own
25 personal experience over the years at Gouverneur Talc.

VULCANO - ROGERS

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2 What percent of your work time would you spend running the
3 Eimco?

4 A In percentage?

5 Q Yeah -- Well, let me withdraw that and ask it this
6 way, maybe it will move us along quicker.

7 Which of the functions you've told me about that
8 you would do as a trammer -- was there one particular job
9 that you did more than the others?

10 A Scraper man.

11 Q So, most of your -- well, strike that.

12 What percentage of your time working at
13 Gouverneur Talc would you say you spent as a scraper man?
14 This is while you were a trammer.

15 A Seventy-five percent.

16 Q And then would it be fair to say the other 25
17 percent would be split up between operating a locomotive
18 and running the Eimco?

19 A Right.

20 Q And then you've already told me you would
21 occasionally -- you'd go work on a crusher?

22 A Right, yeah.

23 Q Now, this scraper man, was there more than one
24 position within that operation that you might have to fill
25 or is there just one person running a scraper, a slusher,

VULCANO - ROGERS

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by themselves?

A Yeah, there's only one man running a slusher, but if you broke all the cables, your helper would run the locomotive. The two of you would put the cables back up or you had a secondary blast.

Q Sir, did you know a fella by the name of Mr. Charlie Minckler?

A Right.

Q What was his job?

A He was a trammer.

Q Would he run the scraper?

A Yes, he would run the scraper. Same as I did, maybe not as much, but he would run a scraper.

Q I think you mentioned a few moments ago that sometimes during the operation of a scraper a cable might break?

A Yep.

Q Then you'd have to fix it?

A Yep.

Q Is it heavy work?

A Yes, you will pull three quarter inch cable on the big ones, you pull that a couple three hundred feet, you know, you're pulling something.

Q Was that one of the heavier jobs you did as a

VULCANO - ROGERS

1
2 trammer?

3 A No, not if the shivs were down, it's a pulley,
4 it's a big, big, probably weigh a hundred pounds. If you
5 pull a hook up, there's testimony to the hook up and a
6 cable runs through, you have a lot of work to put that up.

7 Q How often would that happen, the shivs?

8 A Depends on who's scraping man. When I was
9 scraping, I babied them.

10 Q If I understand what you're telling me correctly,
11 if you had a problem with the shivs, that was heavier work
12 than fixing a cable or dragging a cable?

13 A Depends on the size slusher you're running. They
14 had some little 15 horse up to 60.

15 Q Well, setting the shivs problem aside for a minute
16 and talking just about the work you would have to do to
17 fix a cable on a slusher, was that what you would call
18 heavy work?

19 A Yes.

20 Q Okay. Now, you began working as a trammer
21 approximately in 1966, is that true?

22 A Approximately, around there.

23 Q Now, when you began your work as a trammer in
24 approximately 1966, were there masks available for your
25 use?

VULCANO - ROGERS

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2 A Yeah, yeah.

3 Q And I think you've told us that they were the --
4 the masks that you used to use was the type with the
5 yellow straps that's in the bag marked Exhibit 3?

6 A Right.

7 Q Except the ones you used didn't have any writing
8 on them?

9 A Yeah.

10 Q And the one in the bag does?

11 A Right.

12 Q Where would you get the masks?

13 A Over to the shop's stock room.

14 Q Is this an underground stock room?

15 A No, they had them at the surface before you went
16 down.

17 Q Would you stop at the stockroom before you went
18 underground to get your masks?

19 A They did at first, but when they got the
20 underground lunch rooms you just went over and got a box
21 of them like that and took them down and used them like
22 you wanted to.

23 Q Depending on what year we're talking about, if you
24 got your masks before you went to do your work, either in
25 the stock room aboveground or in the lunch room

VULCANO - ROGERS

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2 below-ground?

3

A Right.

4

Q And would you take more than one mask?

5

6 A Carried them in the top of your hat above your lining.

7

Q So, you'd take extra ones?

8

A Right.

9

10 Q And that's so when the one you were using needed to be changed you'd have another one without having to walk back to the lunch room?

12

A Right.

13

Q Sir, what percentage of your time performing

14 operations of a trammer would you wear the mask?

15

A Depends on where you was working, so.

16

17 Q Can you give me a percentage or isn't that something you really feel you can do accurately?

18

A I'd say probably 50 or 60 percent any way.

19

Q Okay. When wouldn't you wear your mask?

20

21 A Well, you couldn't wear your mask if you was working on cables for one thing or putting up these shivs

VULCANO - ROGERS

1
2 working in a dusty area you'd use the mask whenever you
3 could?

4 A Tried to, yes.

5 Q But if I understand your testimony correctly, if
6 you were doing manual labor, you would have a hard time
7 wearing a mask?

8 A Right.

9 Q Now, talked about fixing a cable on a slusher,
10 okay, is that being -- talked about that as being heavy
11 labor. When a cable would break or need repair on a
12 slusher, would the slusher be shut down?

13 A Right, you'd shut that down and you'd break --
14 loosen the bands up so you could pull the slacked cable
15 off so you could bring the two ends together to hook them.

16 Q When the slusher went down, would that reduce the
17 dust in the area where you were fixing the cable?

18 A Oh, yeah.

19 Q How about the shivs, when you repair, I'm not sure
20 that's the right word when you did this work with the
21 shivs that you have told us was heavy work -- Strike that.
22 I withdraw the question.

23 What other manual labor would be involved from
24 time to time in your job as a trammer, besides what you
25 have already told me about?

VULCANO - ROGERS

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A Oh, once in a great while you had to fix a -- if you didn't have ore to tram, you might fix the track a little bit or ditch a little bit alongside of the track.

Q And that would generally be at times when --
Strike that.

That would sort of fall generally in the category of some type of maintenance work, would that be what you'd call that or no?

A It would be considered maintenance work, right.

Q It wasn't done by a maintenance person, it was done by a trammer, but the purpose was to maintain the track or --

A That was their job, but we had slack times that we would fill in to help them out. It's a different classification.

Q Now, when you say you'd do that type of manual labor in slack times, do you mean by slack times that there really wasn't a lot of ore being withdrawn?

A Um-hum.

Q Yes? You've got to say yes or no.

A Yes.

Q And when there wasn't ore being extracted, would the dust levels be reduced?

A Oh, some would have to be, right.

VULCANO - ROGERS

1
2 Q What other manual labor would be involved, besides
3 what you've now told me about?

4 A None that I know of.

5 Q I mentioned Charlie Minckler to you. I think you
6 said he would operate a slusher from time to time?

7 A Right.

8 Q Would he also be involved in repairing cables from
9 time to time if --

10 A Right.

11 Q If he happened to be in the right place at the
12 right time, so to speak?

13 A Right, because every crew had their problems.
14 There was generally two men to a crew on a tram.

15 Q Now, if I understand your testimony correctly, you
16 wouldn't wear a mask repairing a slusher?

17 A Not very often.

18 Q Did you ever wear it?

19 A I tried.

20 Q Did you notice -- Strike that.

21 Do you know whether any other employees that you
22 were working with in repairing the cable would wear their
23 masks?

24 A About the same as I did that I worked with.

25 Q Was there ever any limit put on the number of

VULCANO - ROGERS

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masks you could use?

A Nope.

Q You were free to take as many as you felt you needed?

A Yep.

Q Okay. Now, when you first began work as a trammer in 1966, how did you learn about the fact that there were masks available?

A I don't know. Just we knew it, that's all I can say. I don't know how I learned.

Q Well, I mean, do you recall whether a foreman or some superior told you about the masks?

A Yeah, somebody must have told me about them, that's for sure that they was there.

Q And did you understand when you began work as a trammer that the masks were there for you to wear in dusty areas?

A Right, yes.

Q Mr. Setright asked you some questions about your excitable nature or your lack of an excitable nature. If I understood you correctly, I think you were saying that you used to be more excitable than you are today?

A Yeah, a lot.

Q A lot more excitable? Tell me about that. How

VULCANO - ROGERS

1
2 were you -- how did you used to be excitable?

3 A Well, I had a short temper, let's put it that way.

4 Q Were you like that pretty much your whole life?

5 A Pretty well.

6 Q Up until you learned about your health problems?

7 A Up until I learned I can't do it.

8 Q That was sometime in 1988?

9 A Yeah, '88 on. I'm a slow learner.

10 Q Now, in 1988 when you -- you know, when you
11 learned about your health problems, did any of the doctors
12 that you saw at that time tell you you ought to try to
13 calm down?

14 A I don't know, did they?

15 MS. ROGERS: Yes, Dr. Loewen.

16 A Oh, Dr. Loewen he said prior to that.

17 Q Tell me about what Dr. Loewen explained to you
18 about being excitable.

19 A I don't know, just told me to kind of take it
20 easy, that's all. He didn't really elaborate too much on
21 it.

22 Q Did you understand he was telling you that you had
23 to take it easy because if you didn't it might have a bad
24 effect on your heart?

25 A He told me it depended on how bad I got, but I had

VULCANO - ROGERS

to stay within reason or try to, that's what they told me.

Q Okay. Now, you were one of 13 kids, right?

A Right.

Q And I think you said you had one of your brothers who had some kind of a heart problem?

A Right, the youngest one. He's in Rochester.

Q What's his name?

A David.

Q David Rogers, I take it?

A Yes.

Q He lives in Rochester I take it?

A (Witness indicates.)

Q Yes? Right?

A Yes.

Q What does he do?

A He's working for Xerox. Don't quote me, but he's got a good job.

Q Last June he was working at Xerox?

A He still does.

Q How old is he, roughly?

MS. ROGERS: Forty, maybe forty, somewhere around there.

A Yeah, he's got to be in his forties.

Q You think he's in his forties?

VULCANO - ROGERS

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2 A Yeah, he's the youngest, youngest boy.

3 Q He's the youngest of your brothers?

4 A Yeah.

5 Q What type of a heart problem did he have, do you
6 know?

7 A I don't really know. He never told me.

8 MS. ROGERS: I think he had bypass surgery
9 but outside of that --

10 MR. VULCANO: Just off the record for a
11 second.

12 (Discussion off the record)

13 Q Mr. Rogers, your wife's here with you and she's
14 watching this proceeding. She just mentioned the fact
15 that the your brother David had a bypass operation about
16 six years ago. Do you remember that?

17 A I can remember when he had it. I don't remember
18 what year it was.

19 Q But you do know he had a bypass operation?

20 A I knew he had something wrong with his heart. I
21 can't say what he did have. I never did find out.

22 Q Any of your other brothers or sisters have any
23 heart trouble that you know of?

24 A Not that I know of.

25 Q Any history of heart problems in your family?

VULCANO - ROGERS

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2 A On my mother's side.

3 Q Tell me about that.

4 A Well, most of them had triple bypass, most of them

5 I know of.

6 Q Who do you mean by most of them?

7 A My cousins on her side.

8 Q Cousins on your mother's side?

9 A Right.

10 Q Did your mother have a heart problem?

11 A She died of a heart attack.

12 Q How old was she when she died, approximately?

13 MS. ROGERS: Sixty-one.

14 Q Sixty-one sound about right?

15 A Sixty-one, yeah.

16 Q Now, your cousins -- Strike that.

17 Did your mother have brothers and sisters?

18 A Yes.

19 Q So, they'd be your aunts and uncles?

20 A Um-hum.

21 Q Did any of them have heart problems that you know

22 of?

23 A Well, her brother did.

24 Q What would his name have been?

25 A Anais Thorton.

VULCANO - ROGERS

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Q Did he die of some type of heart problem?

A Yes, some kind, I'm not sure what. He died when he was young, so.

Q When he was young, are you talking about twenties or thirties or -- how young?

A Late thirties, I think it was.

Q You also mentioned your cousins which I guess would be your mother's brothers' and sisters' kids?

A Right.

Q Which cousins do you remember that had or still have heart problems?

A Would be my first cousins.

Q Like, do you have any names that you remember?

MS. ROGERS: Robert Thorton.

Q Now, whose son would Robert Thorton be?

A He would be my mother's brother's son.

Q And he had some kind of a heart problem?

A He had a triple bypass.

Q Is he still alive?

A Oh, yes.

Q How old is he, if you know, about?

MS. ROGERS: About sixty.

A No, he's pretty near 63.

Q Any other cousins that you can think of that had

VULCANO - ROGERS

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some type of a heart problem?

A His brother, Allen.

Q How old is Allen about?

A He's got to be about 67 or 68 anyhow.

Q And he's had heart problems?

A Yes.

Q Has he had a bypass also, do you know?

A I don't know whether he did or not.

Q Okay. Any other cousins?

A Yeah, his brother Anais, Jr.

Q Okay. Anais, Jr. this is the son of Anais who died young?

A Right, they're all brothers.

Q How about Anais, Jr.?

A He had a triple bypass.

Q Do you know how old he is?

A About forty.

Q Any other ones?

A His sister.

Q What's her name?

A It's Margie.

Q When you say "his sister," that's Anais, Jr.'s sister?

A Right.

VULCANO - ROGERS

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2 Q What kind of a heart problem did she have?

3 A She had a bypass.

4 Q How old is she? Is she older or younger than
5 Anais, Jr.?

6 A She's older. She's got to be.

7 MS. ROGERS: Sixty.

8 A Late fifties.

9 Q What about any other cousins?

10 A I don't know. Them are the ones I know had them.

11 MR. VULCANO: Mrs. Rogers, do you know
12 another one with heart problems? Anita or --

13 MS. ROGERS: Some of them are out west. I'm
14 not sure.

15 MR. VULCANO: Do you know of other cousins
16 that have had heart problems as well?

17 MS. ROGERS: There might be one more, I'm not
18 sure.

19 Q Now, Mr. Rogers, up until June of 1988, well,
20 Strike that.

21 Up until May or June of 1988 -- Strike that also.

22 Let me start again, okay? I'll get there. As
23 best you can remember, when was it that you first started
24 experiencing this shortness of breath that you told us
25 about?

VULCANO - ROGERS

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2 A Oh, must have been around June, yeah, about June I
3 was -- well, when I really noticed it.

4 Q Of 1988?

5 A Right.

6 Q Up until that time, were you feeling okay?

7 A Yeah.

8 Q Did you have any shortness of breath up until that
9 time?

10 A Not that I really realized. My wife did. She
11 told me. But I didn't. I just figured I was getting old.

12 Q Okay. Well, was this shortness of breath that
13 you've told us about here today, was it a sudden change?

14 A Well, it was pretty fast when it went.

15 Q Okay. So, you didn't notice gradually over a
16 period of years that you were shorter of breath?

17 A No.

18 Q It was more -- over what period of time did you
19 notice the shortness of breath?

20 MR. SETRIGHT: Object to the form.

21 Q I'm talking about first noticing it.

22 A It was, like I say, around -- before I really
23 noticed it was in May, May or June, right in there.

24 Q Let me ask you this way, you know, for example,
25 back in January of 1988, did you feel pretty good?

VULCANO - ROGERS

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A Yeah.

Q Did you complain about shortness of breath at that time?

A Nope.

Q So, as far as you knew back in January of 1988, you didn't really have a shortness of breath problem, is that a fair statement?

A Yeah.

Q Now, I think you said you saw Dr. Ebbels at some time about a colon problem, is that true?

A Yes.

Q Do you remember when that would have been about?

MS. ROGERS: A long time ago.

A I don't remember. It was a long time ago.

Q Well, I don't know what you mean when you say a long time ago. Do you mean five years ago or twenty years ago? Can you give me any idea at all?

A Oh, ten anyway.

Q Okay. And how about a hernia, have you ever been treated or told you had a hernia?

A No.

Q Sir, you smoked for a certain period of time, is that true?

A Right, yes.

VULCANO - ROGERS

1
2 Q When did you start smoking, how old were you
3 about?

4 A Seventeen, eighteen; eighteen maybe. Okay. And
5 then did you smoke up until the time or about the time
6 your father died?

7 A Yes.

8 Q And I think you said you smoked around a pack a
9 day?

10 A Approximately.

11 Q Is that cigarettes we're talking about?

12 A Yes.

13 Q Filtered cigarettes?

14 A Yeah, most of them was.

15 Q How old were you when your father died about?

16 MS. ROGERS: Good question.

17 Q Let me ask you this: When did your father die?
18 What year did he die, if you know, about.

19 MS. ROGERS: I think it was '62.

20 Q I'm just doing some math here to try to get an
21 idea of how long you have smoked. You were born in '34.
22 If you started smoking around when you were eighteen, I'm
23 giving an approximate, that would have been about '52 and
24 your father died in '62, so if all's right, that would
25 mean you smoked about ten years, does that sound right to

VULCANO - ROGERS

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you?

A Yeah, right.

Q Roughly?

A Roughly, yeah.

Q Sir, you gave some testimony about a meeting that took place in the carpentry shop at Gouverneur Talc when Mr. Hugh Vanderbilt came and spoke to the miners?

A Yes.

Q Back at that time, was there a concern in the mine or amongst the miners that if the mines were shut down people would be out of work?

A Oh, sure.

Q That was what the scare was about, basically?

A Well --

Q Well, I withdraw the question.

And Mr. Vanderbilt gave a speech or spoke to you, is that true?

A Yes, he did.

Q Now, did he indicate during his speech that you remember that the materials that you were mining were tremolite and were not asbestos? Did he say something to that effect or no?

A I can't remember him saying.

Q Did he say that he didn't believe that the

VULCANO - ROGERS

materials you were mining were asbestos?

A As far as he was concerned, right, he said they were tremolite.

Q Okay. And he was fighting to prove that point?

A Right, yes.

Q And he had spent money, lots of money, to try to prove that point?

A Yes.

Q Mr. Rogers, does your wife smoke?

A No.

Q Or did she smoke?

A No.

Q How about anyone else who might have lived in your household over the years, kids or anybody else?

A Nope.

Q Nobody else smoked, other than you for a little while?

A (Witness indicates.)

MR. VULCANO: Off the record for a second, Jack.

(Discussion off the record)

Q Okay. Mr. Rogers, have you filed a claim for Workers Compensation?

MR. SETRIGHT: I'll object to that as

VULCANO - ROGERS

irrelevant and any mention of the word Workers Comp. or anything in connection with that I object to it as irrelevant and inadmissible and note my continuing objection so I don't get in your way.

MR. VULCANO: Thank you.

Q Did you file a claim for Workers Compensation?

A Yes.

Q And do you remember when that was?

MS. ROGERS: July of '89. Does that sound right? I think.

Q Okay. Was it in 1989?

MS. ROGERS: When you filed it.

A Yeah, I didn't file it right off, see, because we didn't exactly know what was up, and I didn't want to turn my time in. I continued working even after they told me not to.

Q Even after Dr. Loewen told you not to?

A Yes.

Q And with relation to your claim for Workers Compensation, have you appeared at the Compensation Board and testified?

A Dr. Loewen?

Q No, have you had to --

A I've been to the Compensation Board.

VULCANO - ROGERS

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2 Q Are you now receiving Workers Compensation
3 benefits?

4 A Yes.

5 Q Could you tell me what you're receiving?

6 A \$300 a week total permanent.

7 Q Have you filed a claim for social security
8 disability?

9 A Yes.

10 Q And did you receive that?

11 MR. SETRIGHT: I object to this, too.

12 A Yes.

13 Q And what are you receiving in that regard?

14 A Right now they cut it down. I'm getting 826.

15 Q A month?

16 A A month.

17 Q Is that also, you know, a total permanent
18 disability?

19 A Yes, as far as I know it is.

20 Q Sir, did you have a biopsy taken at some point in
21 time of some lung tissue?

22 A Yes.

23 Q Do you remember who did that?

24 A Dr. Loewen.

25 MR. VULCANO: Off the record.

VULCANO - ROGERS

(Discussion off the record)

Q Where do you live now?

A Harrisville.

Q And how far is Harrisville from the Gouverneur
Talc mines?

A Four miles.

Q How long have you lived at that location in
Harrisville?

MS. ROGERS: Thirty-two years.

A Thirty-three years.

Q Now, you said thirty-two and you said thirty
three. Are you guys arguing now?

A Nope, it's --

Q So, it's thirty-three?

A Nope, that's right, she told me that.

Q The last time you saw a doctor, would that have
been Dr. Loewen?

A No, they've got a clinic in Harrisville connected
with Carthage Hospital, so they're working with my lung
doctor and heart doctors and they prescribe the
prescriptions out of Harrisville Clinic.

Q So, you go there if you need a new prescription?

A I go there if anything's wrong.

Q As far as seeing a doctor, not to get a

VULCANO - ROGERS

prescription, but to be examined, would that have been
Dr. Loewen that you saw last or who would that have been?

MS. ROGERS: They did an examination at the
clinic.

A Yeah, they gave me one at the clinic.

Q Do you know who examined you there?

A Well, it was a woman.

MS. ROGERS: No, last one was a man. I don't
what his name is.

A Well, there was two, but the first one was a woman
doctor, what was her name?

MS. ROGERS: Haldorfer (ph).

A Haldorfer (ph), I think and she quit or went some
other place and what's his name --

MS. ROGERS: I don't know what his name is.

A It's another doctor, but I don't know what his
name is took her place.

Q And you plan to go is see Dr. Rechlin, who is
Dr. Loewen's former associate, next time you have to go
you're going to go see him? I guess what I mean by that
is the next time you go, other than at the Harrisville
Clinic?

A Yes, let's put it that way.

Q Do you have an appointment scheduled with

BILELLO - ROGERS

1
2 Dr. Rechlin or is that something you have to schedule with
3 him?

4 A We scheduled that.

5 MR. VULCANO: Okay. I don't have any further
6 questions.

7 EXAMINATION BY

8 MR. BILELLO:

9 Q Mr. Rogers, I have a few questions. Are you
10 familiar with the St. Joe's Mineral Corporation?

11 A Yes, I know of them, but I never worked for them.

12 Q You've never worked for them?

13 A No.

14 Q Is the St. Joe's mines within the general vicinity
15 of Gouverneur Talc?

16 A Yes.

17 Q And do you have a sense of approximately how far
18 away from your residence the St. Joe's mines are?

19 A Yeah, four miles, same as --

20 Q Same distance?

21 A One of them was. Of course, they've got two or
22 three. The other one might be five miles. The first one
23 is probably four miles.

24 Q And as far as you are aware, were you ever exposed
25 to any dust material from St. Joe's Mineral mines?

1 SETRIGHT - ROGERS

2 A No, not that I ever knew of.

3 Q So, it would be exclusively whatever exposure
4 you had would be from your working at Gouverneur Talc?

5 A Yes.

6 Q And your Workers Comp claim, was that filed just
7 exclusively against Gouverneur Talc?

8 MR. SETRIGHT: Object to that.

9 A Yes.

10 Q And in filing that claim, what were the injuries
11 that you were claiming you suffered at that time?

12 MR. SETRIGHT: Object to that and object to
13 the form.

14 A It was -- they said pneumonocosis and coincidental
15 heart.

16 MR. BILELLO: I have nothing further.

17 EXAMINATION BY

18 MR. SETRIGHT:

19 Q Tom, how many first cousins do you have?

20 A There was a big family of them -- God, there's got
21 to be ten or twelve in that family, I don't know exactly.

22 Q I mean, all your first cousins, both sides, I mean
23 there's 13 kids, so, there's got to be a lot of --

24 MR. VULCANO: Objection, but --

25 Q Well, there are -- let me see -- let me ask you

SETRIGHT - ROGERS

1
2 this: Do you know how many first cousins you've got?

3 A Nope, not exactly, no.

4 Q About how many? You talked about four or five of
5 them?

6 A Yeah, on my mother's side there must be ten or
7 eleven in that family on first cousins there.

8 MS. ROGERS: That was just one family though.

9 Q That was just one family, so you've got a bunch of
10 first cousins on your mother's side, don't you?

11 A I don't know how many, they kind of faded apart.
12 We don't, you know, they don't associate anymore, you
13 know.

14 Q Would you say there's at least twice as many as
15 there are in that family?

16 MR. VULCANO: This is on the mother's side
17 we're talking?

18 Q Yeah, on the mother's side.

19 A There's more on my mother's side than on my
20 father's side.

21 Q The question is: Is there twice as many out of
22 that one family of Anais, Jr.?

23 A Yes.

24 Q And then on your father's side, do you have any
25 idea how many first cousins you've got?

SETRIGHT - ROGERS

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2 A There isn't many of them. Might be 15 on my
3 father's side, I think probably at the most on the family
4 side of it of my cousins.

5 Q You identified this smooth mask which was one of
6 the two masks marked Exhibit 3 in another E-B-T, and then
7 we've looked at a black mask which has been marked
8 Exhibit 4. Were you ever furnished one like this?

9 A I could have, if I had wanted it, but I never --
10 never used, that type.

11 Q Why not?

12 A These was easier to use.

13 Q The white masks?

14 A Right, these throwaways we call them.

15 Q What do you mean easier to use?

16 A Easier to carry around. You didn't have to have
17 them hanging on your neck if you didn't need to use them,
18 and you had a lot of cleaning to use that one. Everytime
19 you use it, you had to wipe it out and these were more
20 convenient. They considered them all right to use, they
21 give them to us.

22 Q Could you do your manual work if you were using
23 this black mask, Exhibit 4?

24 A I couldn't honestly say, because I hadn't wore it
25 then.

SETRIGHT - ROGERS

1
2 Q How long was this black one available while you
3 were working?

4 A That's been available for a long time, pretty well
5 as long as these.

6 Q But you didn't use it. Why didn't you use it?

7 A Well, more -- it was the handicap, it was hanging
8 around your neck, if you wasn't wearing it, I don't know.
9 Just heavier and you had to clean it a lot.

10 Q Well, was it left up to you to choose which mask
11 you wanted to use?

12 A Yes, it was.

13 Q And they were both available -- whenever a black
14 one came along, they were both available and you picked
15 the one you wanted to use?

16 A Yeah.

17 Q And they had the lunchroom down in the mine at the
18 500 foot level did you say?

19 A Yes. Used to be on the surface, but then they
20 were losing too much time hoisting the men up and down and
21 of course you lag, you know, so, they built the
22 underground lunchrooms to get more work out of you.

23 Q Would you leave the lunch pail in the lunchroom as
24 you came to work in the morning?

25 A Yes.

SETRIGHT - ROGERS

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Q And what time was lunch?

A Twelve.

Q Half an hour?

A Yes.

Q And when you got to your lunch pail was there dust on it?

A Well, oh, yes.

Q Well, we don't know unless you tell us.

A Well, it was dusty, you could see it all over there was supposed to be no dust in -- it was a dead end draft, but there was dust getting through.

Q Even in a dead end draft, there was dust getting through?

A Right.

MR. VULCANO: Objection.

Q Did it have a horizontal draft door --

A Yes, they dug and put a horizontal in.

Q But the dust, even with the door there, was all over everything?

MR. VULCANO: Objection.

A Yes, oh, yes.

Q Was there dust on the equipment, the locomotive, the railroad cars and the Eimcos and the slushers and the crushers?

1 SETRIGHT - ROGERS

2 MR. VULCANO: Objection.

3 A Yes.

4 MR. SETRIGHT: I guess that's all, thanks

5 MR. VULCANO: No further questions.

6 MR. BILELLO: Nothing further.

7 (Whereupon the witness is excused)

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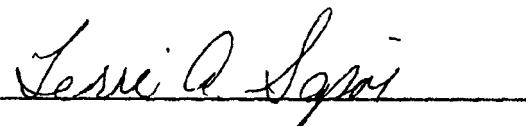
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C E R T I F I C A T I O N

I, Terri A. Sgroi, Court Reporter, do hereby
certify that I attended the foregoing proceedings,
and took stenographic notes of the same, and that
the foregoing typewritten matter is a true and
accurate transcript of the same, and of the whole
thereof, to the best of my knowledge and ability.


Terri A. Sgroi

DATED: 11/21/91