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1 IN THE DISTRICT COURT OF BRAZORIA COUNTY, TEXAS
23rd JUDICIAL DISTRICT
2 CASE NO. 19785-BH02
3 KELLY-MOORE PAINT COMPANY, INC.,
4 Plaintiff,
5 vs.
6 DOW CHEMICAL COMPANY, ET AL,
7 Defendants.
8
9

10 VOLUME I
11 VIDEOTAPE
12 DEPOSITION OF: JAMES W. RAWLINGS
13 DATE: December 9, 2003
14 TIME: 10:15 a.m. to 5:41 p.m.
15 LOCATION: 325 South Orange Avenue
16 Orlando, Florida 32801
17 REPORTED BY: REBECCA L. FELLA, Registered
18 Professional Reporter, Notary
19 Public, State of Florida at Large
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P R O C E E D I N G S

1 THE VIDEOGRAPHER: On the record. The time
2 is 10:15 a.m., and today is December 9th, 2003, and
3 this is the videotape deposition of James Rawlings
4 in the matter of Kelly-Moore Paint Company, Inc.,
5 versus Dow Chemical Company, et al. It's being held
6 at the Westin Grand Bohemian Hotel, 325 South Orange
7 Avenue, Orlando, Florida.

8 The court reporter's name is Rebecca Fella
9 from Henjum Goucher Reporting Services. The videotape
10 specialist is Ed Bookbinder for Visual Impact Communications.

11 Will counsel please introduce themselves?

12 MR. LANIER: This is Mark Lanier. I
13 represent Kelly-Moore. I've got with me Bob Leone,
14 Kelly-Moore's legal team, or my legal team I should
15 say, and Dara Hegar, another lawyer with us.

16 MR. BICKS: And I'm Peter Bicks, and I'm from
17 Orrick, Herrington for Union Carbide, and Barrie
18 Prinz Rosenberg is with me today.

19 MS. PRINZ: It's the other way around.

20 MR. BICKS: I'm sorry; Rosenberg Prinz.

21 MR. LANIER: I knew that.

22 For the record, I do need to put on here that
23 while Judge Gayle had ruled that we could go first
24 and do hour-and-a-half divisions, it has come to my

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1 attention in preparing for this deposition that I
2 have not yet been given at least one prior
3 deposition transcript of Mr. Rawlings. I am not in
4 a position to assess whether or not that enables me
5 to take a full deposition.

6 I have decided to let Mr. Bicks go first, and
7 I don't think we need to do the hour and a half time
8 division. And with all that on the record, we're
9 ready to go.

10 MR. BICKS: And just because Mr. Lanier put
11 on that on the record, let me make the record very
12 clear that we have complied with any request that
13 has been made by Mr. Lanier, and I'm not aware of
14 any request by him for Mr. Rawlings' prior
15 testimony.

16 Had he made such a request, of course we
17 would have given him prior testimony of
18 Mr. Rawlings, but I'm not aware of such a request.

19 MR. LANIER: I've got a specific document
20 request for previous transcripts of depositions in
21 asbestos cases of Union Carbide employees or
22 witnesses. I mean, it's -- it's as plain as black
23 and white.

24 Get a copy of that and file a motion to
25 compel immediately with the document request and ask

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1 for fees for going down there.

2 THE VIDEOGRAPHER: Will the court reporter
3 please swear in the witness if we're ready.

4 THEREUPON:

5 JAMES W. RAWLINGS
6 having been first duly sworn to tell the truth, the
7 whole truth and nothing but the truth, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. BICKS:

11 Q. Good morning, Mr. Rawlings.

12 A. Good morning, Peter.
13 Q. Did you work for the Union Carbide
14 Corporation?
15 A. Yes, I did.
16 Q. And for how many years?
17 A. Just a little over 26 years.
18 Q. And is that where you spent most of your
19 professional career?
20 A. Yes.
21 Q. At some point were you in charge of the
22 Asbestos Group?
23 A. Yes.
24 Q. And when was that?
25 A. Well, it was approximately from 1971 through
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1 some -- sometime probably late '76.
2 Q. We are here today in Florida. Why are you
3 down in Florida now?
4 A. I live part of the year down here. I'm a
5 snowbird. I -- when it snows in the North, I come
6 South.
7 Q. And are you retired today?
8 A. Yes.
9 Q. Is anyone paying you to come testify here
10 today?
11 A. No.
12 Q. Why are you here?
13 A. I'm here just because I have a very strong
14 feeling about trying to bring a perspective to all of
15 this -- I don't know how to characterize it, but all of
16 these lawsuits that are being brought against Union
17 Carbide.
18 I -- I think that basically there are a lot
19 of things that get lost in the translation, principally
20 the fact that we were a very small potato in the
21 asbestos field and a small organization, very small
22 business.
23 We came late to asbestos. We came at a time
24 when the publicity about toxicology -- toxicology of
25 asbestos was -- was rampant, and just, you know, we --
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1 we made an attempt to build a business on specialty
2 asbestos products in a time, I think, of near hysteria,
3 mostly on the part of the media, about the dangers of
4 asbestos.
5 Q. Let me ask you a little bit about your --
6 your family background. Tell us a little bit about
7 that.
8 A. Well, I was born and raised in Provo, Utah.
9 I came out of a family that had been there for a number
10 of generations. I mean, some of my ancestors crossed
11 the plains with Brigham Young, and it was in the days
12 before the atomic family.
13 When I grew up I had aunts, uncles, cousins
14 galore. We didn't exactly live in a compound, but there
15 was a part of Provo, Utah, where probably every other
16 house had some of a relative.
17 It was very secure kind of upbringing in a
18 place like that. I mean, I don't think you see that
19 much anymore. On the other hand, you pay a price in
20 privacy, that is quite obvious, in a situation like
21 that.
22 My wife originally came from Portland,
23 Oregon. We met in college. We were married in 1952
24 while I was in the Air Force, so we celebrated our -- in
25 2002 our 50th wedding anniversary.
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1 We have five children. We have three boys,
2 two girls. My oldest boy is a reporter for a newspaper
3 in Louisiana, and his wife is the head of the art
4 department at Thibodaux -- at Nichols State University
5 in Thibodaux, Louisiana.
6 My oldest daughter is an attorney. She's
7 currently the deputy city attorney for the City of Santa
8 Rosa, California. Her husband is a practicing attorney
9 in private practice in Napa.
10 The -- my daughter Diane is a -- is a
11 teacher, and she's married to a US Navy captain. They
12 reside in -- just out -- just outside the District of
13 Columbia.
14 That daughter has two children by a prior
15 marriage. My daughter in California has two children
16 also. Her -- her oldest daughter, my oldest grandchild,
17 just started at the University of California Davis.
18 The -- Scott, my middle son, he's a computer
19 systems manager for the Ace Hardware Company, and he's
20 principally concerned with maintaining their -- their
21 internal programs for inventory control and so forth.
22 And the youngest child is a -- is a -- works
23 for a subsidiary of AOL, which is a broadband.com. He's
24 the content editor for the -- how does he put it -- the

25 non-broadway ends of it. He keeps track of all of the
0010
1 touring companies and where they are and ticket
2 information and information like that. And he and his
3 wife have a baby that was just born this past February.
4 I'm probably giving you more information than
5 you need.
6 Q. It's always nice to hear about people's
7 family. Tell me a little about --
8 MR. LANIER: Objection; form.
9 You skipped your fourth kid.
10 THE WITNESS: Stephen is a reporter. Suzanne
11 is the attorney. Diane is the teacher. Scott is
12 the computer maven for -- for Ace Hardware, and
13 David, the youngest one, is with broadway.com.
14 MR. LANIER: Thank you.
15 BY MR. BICKS:
16 Q. Tell us about your years in the military
17 service.
18 A. Well, I joined the US Air Force in the summer
19 of 1950, and subsequently I -- I joined the pilot
20 training program, the cadet program; went through
21 preflight, Randolph Air Force Base in San Antonio; went
22 through basic flying school at Parren Air Force Base,
23 Sherman, Texas; advanced flying at Reece Air Force Base
24 in Lubbock, Texas.
25 My first assignment was just a temporary one
0011
1 at Waco, and from there on out I -- I was selected when
2 I was halfway through advanced flying school for the
3 fighter interceptorall weather fighter interceptor
4 program, so I was dedicated even before I graduated.
5 And so my subsequent training was going
6 through the all weather school at Louie Air Force Base
7 in Georgia, going through the intercept school at -- at
8 Tyndall Air Force Base in the Florida Panhandle.
9 After that I was assigned to the -- the 96th
10 Fighter Squadron in the New York, Washington Air Defense
11 Command and then subsequently went to the 59th Fighter
12 Squadron, which was an oversized split squadron. Part
13 of it was at Goose Bay, Labrador; the other part was at
14 Tulich, Greenland.
15 And when I came back to the zone of interior
16 from that assignment, I left, came off active duty with
17 the Air Force.
18 Q. What year did you start with Union Carbide?
19 A. I started with Union Carbide in 1960.
20 Q. And have you heard of the word carbider?
21 A. I certainly have, yes.
22 Q. And tell us what that word means.
23 A. Well, you know, in locations where Union
24 Carbide had a lot of operations, and I -- you know, two
25 that come to mind right off the bat are the South
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1 Charleston, West Virginia area, which for most of my
2 career was -- was an area where we had more employees
3 than any other single location.
4 It was near the end of my time at Union
5 Carbide. Texas City exceeded South Charleston, but the
6 other one, of course, was, and particularly in
7 connection with mining and metals, was at Niagara Falls,
8 New York.
9 And you had a situation where people, you
10 know, multigenerations of people would work for Union
11 Carbide operations in those areas, so you had that kind
12 of continuity.
13 I think Carbide was a champion of promoting
14 from within, which gives employee, I think, an
15 identification with a corporation that they might not
16 otherwise have.
17 But I -- what -- and one anecdote, if I may,
18 my last assignment with Union Carbide when I was CEO of
19 Union Carbide Southern Africa, we were invested in South
20 Africa, and of course, there was a disinvestment
21 movement because of the apartheid government that was in
22 power at that point in time.
23 And we were involved with Reverend Sullivan's
24 initiative to -- to assist the majority in -- in South
25 Africa in the industrial area, and as an alternative to
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1 just merely pulling out of South Africa and going
2 elsewhere, and I used to try -- well, I -- back that
3 up. I didn't try, I went with other corporations
4 involved with Sullivan to universities, because there
5 was a -- kind of a center point for the objection to
6 doing business, continuing to do business in South
7 Africa.
8 And African-American students at the
9 university were, you know, particularly vocal about
10 their criticism that we would try to tell about the
11 Sullivan principles, and it wasn't, you know, always an

12 easy job.
13 And at -- at one point in time an
14 African-American student in a question and answer period
15 stood up and said that she wanted to make a statement
16 and, you know, you're usually prepared for something
17 pretty derogatory. And she proceeded to say that, you
18 know, her father had worked at the Carbide and his
19 father before him had worked at the Carbide at Niagara
20 Falls.

21 Well, Carbider and Carbide and she said that,
22 you know, it enabled her family to live a -- a middle
23 class existence and it gave her father enough
24 wherewithal to educate all of his children and she
25 thought it was a fine company.

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1 You know, it's something that would almost
2 drop you through the floor, but I think it's the epitome
3 of that, you know, are you a Carbider or -- or do you
4 work for the Carbide.

5 Q. Did that sense of belonging exist at all
6 levels of Union Carbide?

7 A. I think so, yes. Yes.

8 Q. You said you started in about 1960.

9 What was your position when you got involved
10 with the Asbestos Group?

11 A. Well, I had come to the Mining and Metals
12 Division as a -- as a vice president, and I was director
13 of financial control, personnel, now human relations,
14 and the government relations for the division.

15 Q. Were you the person ultimately in charge of
16 the Asbestos Group from 1971 to 1976 or 1977?

17 A. 19 -- I think late 1976, but, you know, I'm
18 not exactly clear just exactly when that -- that took
19 place. Well, it had to be in 1976 because in 1977 I
20 know Bob Folkman had succeeded me, so sometime late in
21 1976.

22 Q. And were you the person ultimately in charge
23 during that time?

24 A. Yes.

25 Q. When did you retire from Union Carbide?

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1 A. July 1986.

2 Q. And what did you do after that?

3 A. I went to -- to Zimbabwe as the US
4 ambassador.

5 Q. And who appointed you as the US ambassador?

6 A. Ronald Reagan.

7 Q. And did you also serve under President Bush?

8 A. Yes, I did. For -- President Bush was
9 inaugurated in 1989, and I stayed on for, I think, four
10 months at -- at his request.

11 Q. I want to ask you some questions about Union
12 Carbide generally.

13 How long has Union Carbide been around?

14 A. Well, it's well over a hundred years old. It
15 dates back to, you know, probably 1875 to 1884,
16 somewhere in there.

17 Q. And back in the early 1900s, did Union
18 Carbide make a chemical called acetylene?

19 A. Yes, they did. You know, in the years right
20 after the Civil War a Confederate veteran, Major
21 Moorehead, was experimenting with something new, which
22 were electric furnaces, and he would put in small
23 hydroelectric plants to develop direct current power
24 that would -- would fire one of these furnaces.

25 And you'd have two electrodes, carbon

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1 electrodes, sticking in a -- in a bath, and he could --
2 he could achieve temperatures that never before had been
3 achieved in furnaces. I mean, the typical smelting
4 furnace using coal as the, burning coal as the heat
5 source wouldn't create anywhere near the temperatures
6 that you could get in one of these small electric
7 furnaces.

8 And so he tried to metals of oxides where
9 that -- where they'd never been able to achieve metals
10 before, and he was experimenting with calcium. He was
11 trying to make calcium metal.

12 Now, he had no idea what the -- what the
13 characteristics of calcium metal were, but trying to
14 make this he came up with some sort of glop that he knew
15 was not calcium metal. And he threw it in a water
16 quenching tank, and all of the sudden these gas bubbles
17 started to come out.

18 Well, in time he realized that what he had
19 made was calcium carbide, and calcium carbide when you
20 introduce water produces acetylene gas.

21 And so he at some point in time was looking
22 for capital to start a company where he would install
23 acetylene generators, and in places where they
24 weren't -- that you couldn't access natural gas, you'd

25 use it for illumination and heating, pipe it centrally
0017
1 for street lights and -- and home cooking and home
2 heating.
3 And he went to People's Gas and Electric,
4 which was a public utility in Chicago, and the people
5 who were the major investors in People's Gas and
6 Electric were the initial investors and people who
7 capitalized Union Carbide, and, you know, the initial
8 foray was the generation of acetylene gas.
9 Q. And was that used for things like city -- to
10 light city streets, bicycles and railroads and things
11 like that?
12 A. Yes, indeed.
13 Q. Ferro alloys, was Union Carbide involved in
14 that?
15 A. Very much so. The ferro alloys are -- are
16 metallic alloys that can be used in steel to give it
17 various properties, and so Union Carbide, and again
18 building on Major Moorehead's experience with electric
19 furnaces, began building electric furnaces where there
20 was cheap power available.
21 And Niagara Falls had a new power plant up
22 there that was based on diverting water around the
23 falls, a hydroelectric plant. The power was cheap, and
24 Carbide located its first ferro alloy operation there to
25 fire its electric furnaces.
0018
1 And Carbide predominately was involved,
2 although there were other -- other ferro alloys that the
3 -- ferro chromium, which is a principal constituent of
4 stainless steel, an addition to steel to make stainless
5 steel out of it, and vanadium, ferro vanadium, which is
6 a constituent to get what is known as high-strength,
7 low-alloy steel, which is primarily where you need
8 higher strength than carbon steel, but you can't -- you
9 have -- have to have a lower weight, and so you can
10 reduce the weight, but with the vanadium addition, you
11 can still get the strength of carbon steel.
12 Almost all steel in automobiles, you know,
13 today and for a good many years is high-strength,
14 low-alloy steel with a vanadium addition.
15 And then the last significant ferro alloy is
16 ferro manganese which gives toughness to steel.
17 Bulldozer blades, the great big power shovel blades
18 where the steel can't be brittle, has to be very, very
19 tough, and that's -- you know, it comes from the
20 manganese addition.
21 Q. Let me ask you about something called
22 electrodes. What are they and what were they used for?
23 A. Well, the electrodes, of course, are the
24 things that you would stick into electrical furnaces and
25 you'd arc them. They are good conductors, and you'd put
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1 a tremendously large charge of electricity to them and
2 arc them, and in arcing they would create heat. This is
3 the way you got those very, very high temperatures.
4 Now, there was, you know, a smaller edition
5 of that which had a different name for some reason. It
6 was called the arc carbon, and the arc carbon was the
7 ones where you needed big illumination for construction
8 projects or something like that where you'd need a lot
9 of light so you could work at night when you're building
10 a building.
11 And then the smallest example of arc carbons
12 are in the -- the movie industry. For years the light
13 source for movie projectors in theaters was arc carbons.
14 In fact, Union Carbide received an Oscar back in the
15 '30s sometime for its -- its work in arc carbon
16 illumination of movie projectors.
17 Q. Did Union Carbide make batteries?
18 A. Yes. Under the Ever Ready trademark they --
19 they made all sorts of batteries from the -- you know,
20 the manganese-based D cells that we still have today to
21 later on very sophisticated batteries, cadmium,
22 chargeable batteries and things like that, but all of
23 the batteries were made under the Ever Ready trademark.
24 They also, you know, made flashlights and attendant
25 equipment too.
0020
1 Q. What about bug spray, did Union Carbide ever
2 make bug spray?
3 A. Yes. Union Carbide, you know, during my time
4 there developed a number of insecticides, mostly for
5 agricultural applications, but some of them were used
6 in, you know, in aerosols preventing bug problems with
7 people.
8 Q. What about, are you familiar with 6/12 bug
9 spray?
10 A. Yes.
11 Q. Was that a product that Union Carbide made?

12 A. Yes. Yes, it was.
13 Q. Was that bug spray used by American troops in
14 World War II?
15 A. Yes, it was.
16 Q. Propane gas, did Union Carbide make propane
17 gas?
18 A. Yes, Union Carbide made propane gas. I
19 think, you know, Union Carbide's entry into the chemical
20 business or the plastics business too first was with
21 acetylene.
22 Essentially plastics and chemicals are all
23 synthesized from some source that gives you large carbon
24 atoms. And acetylene will do that, but in time the
25 cheaper sources was material that was coming out of --
0021
1 and to this day it still happens -- coming out of oil
2 refineries, and it was the stuff that didn't make
3 natural gas, wasn't methane, wasn't ethane, that was not
4 in the oil, gasoline range.
5 And, you know, to begin with it was just
6 flared. It was still -- you could still burn it, so it
7 was just burned off. And Carbide would take that
8 material and would make the basic building block, which
9 is still the basic building block, for chemicals,
10 synthesizing chemicals and plastics today, which is
11 ethylene glycol.
12 And, you know, it -- they, in effect, had,
13 you know, an add on kind of a -- of a plant that was
14 working with the sludge into the oil company's material
15 to get the big carbon atoms in the form of ethylene
16 glycol.
17 Now, coming out of the ethylene glycol
18 process, they also had a material that wasn't useful,
19 and that was propane gas, and so they developed the
20 business in a division that was known as Pyrofax or
21 Pyrofax Company.
22 It was predicated on very much like fuel oil
23 is today. They had a fleet of delivery trucks. They
24 would take the propane and deliver it to the home, and
25 it was used for cooking and heating primarily in places
0022
1 where natural gas wasn't available.
2 Q. Let me ask you about chemicals that are used
3 in plastics like polyvinyl butane. Have you heard of
4 that?
5 A. Yes, I have.
6 Q. And was that used in automobile safety glass?
7 A. Right. It was one of the -- one of the
8 plastics -- automobile safety glass, you know, and
9 before it was developed, one of the terrible things with
10 automobile accidents is they had ordinary window glass
11 in there and it would shatter and, of course, wound
12 people pretty badly, a lot of facial injuries.
13 And the -- what now you had is you would take
14 that, that material, the polyvinyl butane, and you would
15 sandwich it between two -- two pieces of glass and
16 create, you know, a shatterproof glass that is still
17 standard in automobile windows today.
18 Q. What -- was that kind of plastic used in
19 things like shower curtains, raincoats and belts?
20 A. Yes.
21 Q. Did Union Carbide make the plastic six-pack
22 carriers that are used for six-packs of soda and beer?
23 A. Yes, they did.
24 Q. In World War II, did Union Carbide supply all
25 of the polyethylene that was needed for use in radar?
0023
1 A. To the best of my belief, that's true that
2 they did.
3 Q. Let me ask you about something called
4 radioisotopes for cancer treatment. Was Union Carbide
5 involved in that?
6 A. Yes. Union Carbide had a division called the
7 Nuclear Division. They built a small reactor at Tuxedo
8 Park in New York, and that reactor was used extensively
9 to manufacture radioisotopes that used by -- for to
10 medical treatments.
11 Q. What about synthetic gems used for instrument
12 bearings, did Union Carbide have any role there?
13 A. Yes, they did. They -- again, their basic
14 technology in developing high temperatures, they
15 developed a system of building, importantly, synthetic
16 rubies a crystal at a time.
17 And they would build it up and make a -- a
18 ruby rod, and of course, the primary use of the ruby
19 rods was if you talk about lasers all of their
20 applications that you see today, the thing that -- it's
21 like the LA stands for light amplification, and that
22 amplification comes about from an excitation of ordinary
23 light into something that is, you know, very focussed,
24 very, you know, long range and, you know, can develop in

25 and of itself very high temperatures.

0024

1 But the ruby -- synthetic ruby rods made by
2 Union Carbide were the key, the basis of the -- of the
3 lasers. That's still true today.

4 Q. Tell us what the Lindy Star sapphire is.

5 A. Well, that was another synthetic gem, a
6 synthetic sapphire that they made, and they were -- they
7 sold these commercially to jewelry people like Harry
8 Winston and folks like that.

9 And they're beautiful stones, but they're
10 obviously manufactured because they're so perfect. The
11 lines in them geometrically, you know, are absolutely
12 right on, where a natural sapphire's lines just don't
13 tend to be that perfect.

14 Q. How experienced was Union Carbide with making
15 and selling chemicals and minerals that were used with
16 all these products we've talked about?

17 A. It's sort of -- you know, it was the core of
18 their business, that big effort in the area, the
19 familiarity was tremendous.

20 Q. Did some of these products have potential
21 hazards?

22 A. That's certainly true. I mean, Union Carbide
23 eventually got in the mining business to supply its
24 ferro alloy operations with chrome ore, manganese ore
25 and vanadium ore.

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1 These were underground mining operations, and
2 start with the hazards that you operate in mining. I
3 mean, at the end of every shift in a mine, they -- they
4 blast, and they're working with high explosives that are
5 bringing down face walls. And when the next shift comes
6 in, they come out and muck out the ore.

7 And, you know, the rock itself gets fractured
8 by the explosion, so you always have to go in and bar
9 down, which is you sound the rock around the face of the
10 ore with a big, long crowbar, and if it sounds solid,
11 you're fine, but if it dings, you know there's something
12 structurally wrong with that.

13 And of course, the thing you're worried about
14 is the -- is the roof of the mine coming down, and so
15 you have to bar down any of the dingy sounding
16 formations, and so you can be entirely free of risk that
17 you won't have a rock fall. It's just impossible to
18 assure that sort of a situation.

19 Then the blasting itself, I mean, there's
20 people working with high explosives underground is
21 another problem.

22 In the ferro alloy operations you tap those
23 electric furnaces just the way you do with a steel
24 furnace, and you've got -- you know, you've got people
25 there working with molten metal coming out of those

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1 furnaces and going into chill pots. You know, it's not
2 without a certain amount of risk.

3 When you get into the chemical business,
4 there are all sorts of problems with the toxicology of
5 various chemicals, some of them are very useful, but
6 they have -- have to be handled extremely carefully.

7 Q. And how did Union Carbide communicate with
8 its customers about hazardous chemicals?

9 A. Well, they had -- for every product that they
10 sold, they had toxicology reports, and those were made
11 available to the customers and they set forth whatever
12 Carbide knew about the toxicology of the product.

13 Q. Let me talk to you a little bit about the
14 Asbestos Group.

15 What was the size of the Asbestos Group? How
16 many people were involved?

17 A. It was very small. I mean, you know, the
18 King City, I think the total employment in the mill out
19 there was less than 50 people, and I would say probably
20 more like 30; in the marketing end of the thing, a half
21 dozen.

22 Q. And did that half dozen in the marketing end,
23 did those folks report to you ultimately?

24 A. Well, yes. When I first took over
25 responsibility, the smelter and the marketing group

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1 reported to me individually. Quite soon after that we
2 changed it around so that the -- both groups reported in
3 to John Myers. It was more -- more efficient use of
4 people.

5 And Myers and the salesmen all came over from
6 the R&D section that had developed the products that we
7 hoped would make the asbestos business a good one for
8 Union Carbide.

9 Q. And you mentioned salesmen. Give us a sense
10 of the salesmen and their backgrounds.

11 A. Well, starting with John Myers, I mean, he

12 was very much of a scientific bent. He had worked in
13 the R&D section of one of the chemicals divisions, and
14 that was true of all of the salesmen, per se.

15 And then Harry Rhodes, you had a guy who
16 really had trained as an industrial hygienist, but if
17 you look at them, if you tried to characterize that
18 small marketing group, very, very high technical input.
19 They weren't -- I'll put it this way. They weren't
20 characteristic of most salesmen.

21 Q. Were they scientists?
22 A. Well, yes, really they were scientists.

23 Q. Let me ask you about the asbestos that was
24 out in California. What was it called?
25 A. Well, it came from the Calidria mining

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1 district of California, which is a pretty remote area.
2 It is short fiber, high purity mineral. There is
3 nothing quite like it elsewhere in the world. I mean,
4 the byproduct short fibers that have come from other
5 operations are not of the -- of the purity that you have
6 of what we always called Calidria asbestos.

7 It's a gigantic deposit. It was found by our
8 exploration group when they were looking for something
9 else, and as a matter of fact, they were -- it was
10 during the post-Korean period.

11 Mindful of the fact that we had a lot of --
12 of materials that were produced outside the United
13 States and wouldn't be readily available in a time of
14 war, we started to stockpile them, and we also tried to
15 develop indigenous sources.

16 Now, the commercial grade of chrome ore was
17 about 50 percent chrome oxide, and we knew we had some
18 deposits of chrome in the United States. They weren't
19 commercially viable at that time, but in an emergency
20 time of war, you could use them. The cost would be
21 high, but in an emergency you'd use them.

22 So as part of the stockpiling programs, we
23 not only were stockpiling chrome ore in piles in various
24 locations around the United States, we were going out to
25 try to identify these low-grade deposits that could be

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1 used in an emergency.

2 And in the Calidria area the geologists saw
3 some indication there might be low-grade chrome deposits
4 out there, and they were looking for them when they came
5 upon this, you know, rather gigantic asbestos deposit.

6 Q. Did you personally think the Calidria had
7 unique properties?
8 A. Personally, yes.

9 Q. And what was your frame of mind about the
10 possible usefulness of that asbestos?
11 A. Well, first of all, because of the short
12 fiber, it was -- you know, there were certain asbestos
13 markets that we were just precluded from participating
14 in.

15 Q. And what markets were those?
16 A. Well, insulation, we could never participate
17 in insulation with a short fiber. You could never weave
18 short fiber into asbestos cloth. It was unsuited for
19 cement pipe with an asbestos content because of the
20 short fibers.

21 I don't think it was ever -- we took a look
22 at it, but we didn't think it was suitable for brake
23 linings. So there were these markets that, you know, we
24 never had a chance to participate in.

25 Q. Was there any particular type of Calidria

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1 that you thought had real potential?
2 A. Well, from the word go, the emphasis was on
3 developing chemically treated short fiber asbestos to
4 make a new set of products. These were called our resin
5 grade asbestos products, and we felt that we -- we could
6 build a business around these.

7 First of all, if you looked at the businesses
8 we could compete in, when you looked at paint and tape
9 joint compounds or you looked at -- at the chrysotile
10 businesses, we couldn't compete with people who were
11 producing on the East Coast because of the freight
12 rates.

13 You know, asbestos is a low-density,
14 high-bulk product that fills up freight cars without
15 getting a great deal of weight into them, and they --
16 the rates were high density -- you know, a high-density,
17 low-weight product is very high, which the freight
18 weights would prohibit us from participating in those
19 markets.

20 The same is true with almost any of the
21 applications where we could, so we were kind of confined
22 of markets that were in the West. We didn't -- we
23 wouldn't have gone into the asbestos business if that
24 was all we could see.

25 Now, it was important for us while we were
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1 trying to develop a market for the resin grade products
2 to try to develop some cash flow for the business by
3 participating in these markets, but the ultimate goal of
4 the -- of the Carbide asbestos business was to develop a
5 good, sound, viable market for these new products.
6 There were a lot of new products, but I'm
7 going to tell you about one in particular that we had
8 high hopes for. It was called RG-244, and it was a
9 chemically treated asbestos and it was used as a
10 thixotropy in the plastics industry.
11 Q. What is a thixotrope?
12 A. A thixotrope is a -- I always said it should
13 be called a fixotrope, not a thixotrope, because if you
14 took that product and you put it -- you poured it as a
15 powder or as a pellet in that glass, it would be very
16 much solid and you could fill the glass up, the rest of
17 the glass up with water about to there and you could
18 very slowly turn that glass over and nothing would
19 happen. It would just stay there as a solid, and you
20 could put some energy to it by just doing this
21 (indicating) and it would pour out like water.
22 Now, when you added it to, say, polystyrene
23 as an additive usually in around one percent, it would
24 give that same quality to the resin. And one of the
25 important uses of -- of that resin was making boat
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1 hulls, so-called fiberglass boat hulls.
2 And you'd start with a mold, a hull mold,
3 where you move from the inside -- from the inside inward
4 and you try to build up a uniform thickness for that
5 hull.
6 And what you do is you start out with what
7 they call a clear gel coat, and while it was still
8 tacky, then you'd lay fiberglass in there, and
9 fiberglass was like reenforcingrod in cement. Then you
10 put another layer on, and these, these layers were
11 applied by spray.
12 Well, when I stay that it was a thixotropy,
13 the last thing in the world you wanted to happen is when
14 you were spraying the top part of the mold is for it to
15 start to run to the bottom of the mold. You're looking
16 for uniform thickness.
17 So you put the -- put the 244 into the
18 product; you'd spray it on. It would -- with the energy
19 of the spray gun it was a liquid. And it would come
20 out, but the minute it would hit that static surface it
21 would become solid, and you could build up these nice
22 uniform layers of the boat hulls.
23 And it was true of shower enclosures,
24 bathtubs, if you look at the Corvette, the -- you know,
25 the plastic body members of that car, anything you were
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1 making in a mold, it had these properties.
2 And we had made the best mousetrap in the
3 world. I mean, there were other thixotropies, fume
4 silica, but it was nowhere near as effective as our
5 product and it couldn't -- because of its higher cost,
6 it couldn't compete with our product.
7 So this was the kind of product that was
8 going to make the Union Carbide asbestos business, if
9 indeed it could be made a successful business.
10 Q. You mentioned tape joint compound. Was
11 asbestos used in tape joint compound?
12 A. Yes.
13 Q. And was that done before Union Carbide sold
14 any Calidria?
15 A. Yes. I mean, you know, the tape joint
16 compound business was, you know, well established when
17 we came into the -- into the picture.
18 Q. Based on your history with the Asbestos
19 Group, did you feel that the manufacturers of tape joint
20 compound products were experienced with using asbestos?
21 A. Well, certainly they -- they'd had a long
22 history of -- of using asbestos products in tape joint
23 compounds, yes. There's nothing new to them. I mean,
24 it wasn't -- I'll put it to you this way. The customers
25 that we were trying to develop for RG-244 were people
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1 who had not used asbestos products before, and that
2 was -- they were certainly a different breed of cat
3 than -- than the chrysotile people or the tape joint
4 compound people who had, you know, long experience with
5 asbestos.
6 Q. And was the experience of the companies in
7 the tape joint compound field, was that learned before
8 Union Carbide even started selling Calidria?
9 A. Yes, quite clearly.
10 Q. Have you heard of a company called
11 Kelly-Moore Paint Company?

12 A. Yes.
13 Q. And was that a company that was using
14 asbestos before Union Carbide was even selling asbestos?
15 A. I believe that's so, yes.
16 Q. Did you yourself, Mr. Rawlings, think that
17 Calidria could be used safely?
18 A. Yes.
19 Q. And if you didn't feel that way, would you
20 have allowed Union Carbide to be in that business?
21 A. No.
22 Q. From time to time did you go out to the mill
23 in King City?
24 A. Yes, I did from time to time.
25 Q. Why did you go out there?

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1 A. Well, I was primarily interested in -- in
2 looking at -- we were in a time of change. The
3 threshold limit values were certainly coming down. I'd
4 look at what they had done to reduce dust, what they
5 were working on in that regard, very much interested
6 in -- in that aspect of what was going on out there.
7 I only went out to the mine once because it
8 was a -- a fairly pedestrian mine is what you could call
9 it, but it -- primarily I just wanted to review
10 firsthand their control of dust control programs.
11 Q. And what did you see when you were out there?
12 A. Well, they were doing a very good job, I
13 think. You know, every -- it seemed like every time I
14 got out there, you know, there was some pretty marked
15 improvements in -- in dust control.
16 Q. Was the health and safety of the people who
17 worked out at King City something that you paid
18 attention to?
19 A. Well, very much so. In Union Carbide's
20 culture, I suppose you'd call it that, any manager
21 having responsibility for -- ultimate responsibility for
22 a product was taxed very hard for the health and safety
23 of the employees.
24 You know, most of the time while I was there
25 it was a primary factor in determining, you know, the

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1 level of bonuses that you would receive if you were in,
2 and the health safety program cascaded down from the top
3 of the corporation.
4 Q. Did -- in the King City was there a medical
5 monitoring program in place?
6 A. Yes.
7 Q. And are you aware of any King City worker who
8 has developed an asbestos-related disease?
9 A. To my knowledge, no, there have been none.
10 Q. Tell me, are you familiar with how Calidria
11 is mined?
12 A. Yes.
13 Q. Tell us how it's mined.
14 A. Well, the -- the deposit is on the surface.
15 You don't -- there's no overburden to remove. And you
16 might call it a open cast mine, but all we did was just
17 terrace a hillside. In, you know, the best of all
18 mining worlds, we were developing an ore.
19 Everything that we took off the hillside was
20 ore, so we had a, you know, a mining plan, if that's
21 what you could call it, just to terrace it so it was
22 easier to -- to take off the stuff with a bulldozer and
23 load it on the trucks, but it was -- it was a pretty
24 rudimentary mine. We never used explosives out there.
25 Q. Well, how does that mining that you described

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1 compare to the way that Canadian asbestos is mined?
2 A. Well, most of those were open pit mines too.
3 They weren't underground mines, but they were huge pits
4 and they had to remove a lot of overburden before they
5 could get to the ore.
6 And, you know, I've only seen pictures of
7 those Canadian pits, but, you know, they -- they looked
8 to be 70, 80 meters deep and, you know, as long as a
9 half mile. And that is really some different way of
10 mining.
11 And, you know, I think they had to use
12 explosives to -- certainly with the overburden. I don't
13 know whether when they were in ore they used it, but --
14 Q. How much public information was there about
15 the risks of asbestos when Union Carbide was involved in
16 the business?
17 A. Well, you know, it was -- you could pick up a
18 newspaper about any day of -- of the week and there
19 would be some story in there. There was a -- kind of a
20 media frenzy at that point in time with respect to
21 asbestos toxicology, and the -- you know, just driven
22 home to you that this was a problem that the media was
23 involved with. It was getting great exploitation.
24 There were -- there were things that, you

25 know, we found kind of upsetting. Our competitor for
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1 the 244, the fume silica, had a threshold limited value
2 too that we thought was -- the industry was kind of
3 haphazard about complying with it, but you'd never --
4 you know, the media was on the asbestos.

5 And, you know, part of it was the fact that
6 the disaster, which was the shipyard insulation
7 operations of World War II, were -- in that period we
8 were starting to see many, many deaths from asbestosis
9 and lung cancer and other things.

10 So, you know, it wasn't a frenzy that was
11 without merit, but it was -- you were having a lot of
12 people that have worked in shipyards during World War
13 II -- World War II starting to die during that period.

14 Q. And was Calidria used in any of those
15 shipyards?

16 A. No.

17 Q. Could you pick up a newspaper or a magazine
18 during the time period that you were involved with
19 asbestos and not see something that talked about the
20 risks?

21 A. Well, you know, it wasn't daily but, you
22 know, it seemed like that sometimes. It was, you know,
23 it was a very hot topic as far as the media was
24 concerned.

25 Q. Could you go to the public library and read
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1 about the hazards?

2 A. Yes, you could.

3 Q. Did you yourself do anything so that you knew
4 about the hazards of asbestos when you became involved
5 in the business?

6 A. Well, when -- when I knew I was going to take
7 over the business as an additional duty to my staff
8 jobs, I -- I went into a very intensive period of -- of,
9 you know, getting myself up on the learning curve.

10 It was helpful to have a sales group that,
11 you know, was of a scientific bend of mind because they
12 could fill me in on a lot of data. And Harry Rhodes in
13 particular was very helpful, but then the industrial
14 hygienist, Paul McDaniel, who was assigned to asbestos,
15 among other things, coming out of the Carbide Medical
16 Group was helpful.

17 And Dr. Dernehl, who headed up our Medical
18 Group at Union Carbide, and his staff, of course, was
19 pouring over all of these reports and whatnot because
20 they were -- some of the, you know, some of the reports
21 were controversial.

22 There was a lot of argument about whether the
23 scientific method used was -- was adequate in doing
24 these studies, and it was a complicated situation
25 because it's kind of long-term exposure as far as
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1 asbestosis and cancer are concerned that determined this
2 statistical excess of cases vis-a-vis some sort of
3 control group.

4 And the long term was a complicating factor
5 because you'd sit there and say to yourself, well, where
6 can you go find, if you want to do a current study, the
7 history of somebody that was working in asbestos going
8 back 30 years. It was difficult to find records that
9 would enable you to do that.

10 It -- it was inherent in the thing of the --
11 further complicated by mesothelioma which was, you know,
12 a rare form of cancer, but apparently there was, you
13 know, evidence coming through that massive exposures
14 that had happened 20 years ago but not necessarily a
15 continuous cumulative exposure might be a precipitating
16 factor.

17 So it was difficult for people trying to do
18 studies because of the reconstructing the history, say,
19 of a 30-year period and reconstructing a base group to
20 compare it with over a similar period of time was, I
21 would say was all but, you know, impossible then, but
22 the scientists were delving with it -- you know, dealing
23 with it as best they could.

24 And so we independently, looking at all of
25 these various studies, made a judgment with respect to
0041

1 what we thought were the reasonable -- the most
2 reasonable studies, the ones with the most validity,
3 and based on that determination we moved forward in the
4 asbestos business.

5 Q. And were these studies that you've talked
6 about, were these public studies?

7 A. Yes. Yes.

8 Q. And did Union Carbide make these studies
9 available to its customers?

10 A. Well, certainly in the toxicology report we
11 referred to them fairly often.

12 Q. How much time did you spend yourself going
13 through this process of learning about the hazards of
14 asbestos?
15 A. You know, for probably about eight or nine
16 weeks it was very intensive. I mean, you know, I --
17 I've been a staff man. I was now given responsibility
18 for a business -- business with a lot of complications
19 and, of course, the biggest factor you had to deal with
20 was toxicology and the -- the media frenzy surrounding
21 asbestos.
22 Q. And after that work that you did, did you
23 form a view about whether or not Calidria could be used
24 safely?
25 A. Yes, I did.

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1 Q. And what was your view?
2 A. My view was that it could. You know, if I
3 had -- if that wasn't my view, I would have, you know,
4 stopped the project in its -- in its tracks -- not, you
5 know, it wasn't even altruistic because it would bear on
6 my -- my bonus money and everything else if I went
7 forward with something where I was placing our own
8 employees in danger, and, you know, certainly if you
9 were somehow transferring that kind -- you know, that
10 sort of thing to your customers, it would be doubly
11 bad.
12 Q. You said that you went out to King City to
13 visit the mill from time to time?
14 A. Yes.
15 Q. When you were out there, were you yourself
16 exposed to asbestos?
17 A. Yes. Well, I was exposed to whatever the
18 workers were exposed to.
19 Q. And --
20 A. I didn't go around in a bubble.
21 Q. Were you concerned about your health when you
22 were out there, out at the King City mill?
23 A. No.
24 Q. Let me ask you about the way that Union
25 Carbide and the Asbestos Group communicated health
0043
1 hazards to its customers.
2 What was the general policy in the Asbestos
3 Group about giving out health information?
4 A. Well, the general policy -- you have to look
5 at the -- our toxicology -- toxicology reports were --
6 were really the basis of the information that we -- we
7 gave out, and we gave that out on a regular basis to --
8 to customers.
9 The information we gave to our own employees
10 was complete. We had dialogue on all of these subjects
11 with them. They had meetings at King City to discuss
12 it. They were certainly privy to our views and -- and
13 to the basis upon which those views were developed.
14 But, you know, that was -- that wasn't
15 anything that was particularly true of asbestos. That
16 was just true of Union Carbide generally. We had a
17 toxicology report on -- on all of our products, and they
18 were made available to the public generally and
19 particularly to -- to customers, always to customers.
20 Q. Let me ask you this, and I -- I'm going to
21 mark as an exhibit the testimony of an expert witness
22 for Kelly-Moore who has testified in this case, and
23 we'll call it Rawlings' Exhibit 1.
24 (Rawlings Exhibit No. 1 was marked for
25 identification.)

0044
1 BY MR. BICKS:
2 Q. This is the testimony of somebody named David
3 Egilman, and if you open it up, I highlighted something
4 that I wanted to ask you about.
5 Are you with me? It's hard to see, but it's
6 page 101.
7 A. It's page 101, yes.
8 Q. The one at the bottom.
9 A. Yes.
10 Q. It's lines 12 to 17, and the question was --
11 A. So what your investigation and what you're
12 telling us today is that Union Carbide gave to
13 Kelly-Moore the asbestos toxicology report that talked
14 about the safe level under the TLV and that one of the
15 things -- and that's one of the things that Kelly-Moore
16 relied on.
17 Q. And the answer he says there is right?
18 A. Right.
19 Q. And turn the page to exhibit -- page 104, and
20 it says there, the question is, Let me show you what is
21 Egilman Exhibit 8, which is another copy of the
22 toxicology report that Union Carbide revised. And I
23 presume your testimony is going to be the same that
24 Kelly-Moore received that document. And the answer is,

25 right, based on previous testimony.

0045

1 Do you see that?

2 A. I'm -- I'm kind of lost. I mean, I go from

3 page 103 over to -- here we are, 104. Okay. Right. I

4 -- I see where you are right now.

5 Q. And then the question at line 7 is, And let

6 me show you Exhibit 9, which is actually a Calidria

7 asbestos tape joint compound brochure. I presume your

8 testimony also is that Kelly-Moore received a copy of

9 that document as well? And the answer there is,

10 correct?

11 A. Correct.

12 Q. Based on your experience at the Asbestos

13 Group and the person in charge, do you think this expert

14 for Kelly-Moore got it right when he said that

15 Kelly-Moore had gotten Union Carbide's toxicology

16 reports?

17 A. Yes.

18 Q. What was the purpose of preparing those

19 reports in the first place?

20 A. Well, Union Carbide made a lot of chemical

21 products. Certainly there were metallurgical products

22 that we made that had a hazard connected with them, and

23 we simply had to tell people we were selling those

24 products to what those hazards were. There was -- you

25 know, it -- what can I say? It's part of -- part of

0046

1 very strong corporate procedures that came to bear on

2 that.

3 Q. Is really the only way that you can do

4 business as a company that sells minerals and chemicals

5 to educate your customers?

6 A. Well, it's true. I mean, you know, the --

7 that's -- that's what these things do. They educate

8 them. In effect you tell them what you know about the

9 product, and that -- that's certainly an educative

10 process.

11 (Rawlings Exhibit No. 2 was marked for

12 identification.)

13 BY MR. BICKS:

14 Q. Let me put in front of you three exhibits

15 we'll call Rawlings 2. It's UCC Exhibit 153, and let me

16 show you that. This is a status summary mid 1970

17 asbestos toxicology report. Do you see that?

18 A. Yes.

19 Q. And is this the kind of document that Union

20 Carbide would give out to its customers?

21 A. Yes, it certainly appears to be the kind of

22 thing that we would put out to customers.

23 (Rawlings Exhibit No. 3 was marked for

24 identification.)

25 BY MR. BICKS:

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1 Q. And take a look at UCC Exhibit 68, which

2 we'll call Rawlings 3, which is an asbestos toxicology

3 status summary October 1972 ;is this also the type of

4 report that Union Carbide would give out to its

5 customers?

6 A. Yes. I can't really read the detail there,

7 but certainly on the -- on the basis of the introductory

8 material it is talking about the things that we would

9 tell customers.

10 Q. Take a look, if you would, at page 19131 at

11 the bottom.

12 What is this document, 19131?

13 A. Well, it's a report by the National Academy

14 of Sciences in Washington in 1971; subject, airborne

15 asbestos.

16 Q. And is this the kind of information that

17 Union Carbide gave out to its customers in the Asbestos

18 Group?

19 A. It certainly is, yes.

20 Q. What do you know about the National Academy

21 of Sciences? What is that group?

22 A. Well, it's, you know, a US governmental

23 agency, and, you know, it has a kind of sterling

24 represent -- you know, recognition value in the

25 scientific community. I guess it would come with a high

0048

1 degree of creditability any way you look at it, their

2 pronouncements on things.

3 Q. And why would Union Carbide give out to

4 customers reports done by the National Academy of

5 Sciences?

6 MR. LANIER: Objection to form.

7 A. Well, it's just, you know, it's part of the

8 proposition that, you know, when you talk about a

9 toxicology report, asbestos in that period I've

10 characterized as the, as the media frenzy period, you

11 really had to go further than most people would have to

12 go in getting out toxicological information.
13 And I suppose that basically you could say,
14 well, we -- in our toxicological reports we erred on the
15 conservative side of giving people as much information
16 as we could, because given the -- given the times, it
17 was the expedient thing to do.
18 (Rawlings Exhibit No. 4 was marked for
19 identification.)
20 BY MR. BICKS:
21 Q. Look at UCC Exhibit 26, which we'll call
22 today Rawlings 4. This is a Calidria asbestos SG-130
23 and SG-210 tape joint compound brochure.
24 A. Yes.
25 Q. And it this also a brochure that Union
0049 Carbide gave out to its customers?
1 A. Yes. Well, it was specifically designed for
2 people in the tape joint compound business.
3 Q. Take a look at that document and tell us how
4 much of it is devoted to talking about toxicology.
5 A. Well, a page and a half plus a graph plus,
6 you know, the distribution within Union Carbide of the
7 document.
8 Q. Is it fair to say that most or much of this
9 document deals with asbestos toxicology?
10 A. Most would be appropriate.
11 Q. What kind of impact would giving out
12 information like this have on sales?
13 A. Well, I mean, you know, there isn't any doubt
14 that, again, given the period that this would not
15 exactly be -- further the sales effort. Let me put it
16 this way. Maybe it's an anti-sales document in a sense.
17 Q. Why then would Union Carbide give it out?
18 A. Mostly because, as I say, it -- it was more
19 important that they have all of the information than to
20 get a -- get a digest of it in -- in a sense.
21 Q. Did Union Carbide employees publish
22 information that talked about the health risks of
23 asbestos?
24 A. Yes, they did.
0050 Q. And was that something that was encouraged?
1 A. Yes.
2 Q. Why?
3 A. I think that Selikoff in particular at one
4 point in time published a study that was particularly
5 critical of tape joint, the use of tape joint compound
6 containing asbestos, and we felt that it was expedient
7 to not so much refute them but to -- to get -- get
8 information out that indicated that -- our view that
9 asbestos could be safely used in tape joint compounds.
10 (Rawlings Exhibits No. 5 & 6 were marked for
11 identification.)
12 BY MR. BICKS:
13 Q. And let me show you Exhibits UCC 151 and UCC
14 152 which we will mark as Rawlings 4 and 5 --
15 MS. HEGAR: 5 and 6.
16 Q. -- 5 and 6. And are these the articles that
17 you're talking about that publish the work by
18 Dr. Selikoff as well as other information on the hazards
19 of asbestos?
20 A. Yes.
21 (Rawlings Exhibit No. 7 was marked for
22 identification.)
23 BY MR. BICKS:
24 Q. Let me show you what we'll mark as Rawlings
0051 7, which is also UCC 119, which I'm going to ask you to
1 take a look at.
2 This is an article that's published by
3 somebody -- by John Myers --
4 A. Yes.
5 Q. -- at Union Carbide?
6 A. Yes.
7 Q. And -- and it indicates at the bottom that it
8 was a reprint of a Journal of Paint Technology?
9 A. Yes.
10 Q. Go to the second page of this, and do you see
11 the paragraph that says, what is the asbestos hazard?
12 A. Yes.
13 Q. And do you see in the middle a reference
14 there to the disease mesothelioma?
15 A. (No response.)
16 Q. The paragraphs starts out, a third disease
17 mesothelioma --
18 A. Yes.
19 Q. -- has more recently been associated with
20 persons exposed to asbestos. Did you see that?
21 A. Yes.
22 Q. And can you read the rest of that paragraph
23 to us?
24

25 A. Mesothelioma is an extremely rare cancer of
0052
1 the lining of the chest pleura or the abdominal cavity
2 peritoneum. In contrast to the lung diseases, there is
3 some evidence that mesothelioma can occur after brief
4 exposure to relatively high fiber level.
5 Q. And is this the kind of information that
6 Union Carbide put in public documents?
7 A. You can't sweep anything like mesothelioma
8 under the rug.
9 Q. Was Union Carbide open and honest with its
10 customers about the risks of asbestos?
11 A. Yes.
12 Q. And was information about the risks of
13 asbestos public information?
14 A. Yes.
15 Q. Could you go to the library and find out
16 about it if you wanted to?
17 A. If you were diligent enough you certainly
18 could.
19 Q. Could you pick up a newspaper to find out
20 about the risks of asbestos?
21 A. Well, it might sometimes be a bit skewed,
22 but, you know, certainly the warnings of the danger were
23 there.
24 Q. Did you personally, Mr. Rawlings, honestly
25 believe that Calidria was a useful product that could be
0053
1 used safely if you did good housekeeping?
2 A. Absolutely.
3 Q. And if you thought anything other than that,
4 would Union Carbide have been involved in that business?
5 A. No, they wouldn't. I mean, you must remember
6 that it was a very small business. If we had been
7 successful with our better mousetrap, if we could have
8 educated the customer, we would have had a very good
9 small business.
10 We ultimately failed because we couldn't
11 convince the customer, couldn't -- couldn't not convince
12 him but that he wouldn't accept the educational material
13 that we furnished to them.
14 Q. Did this ultimately become a business that
15 Union Carbide made a lot of money in?
16 A. No, not at all.
17 Q. Let me ask you, you worked at Union Carbide
18 for over 25 years and worked with the folks in the
19 Asbestos Group for at least six years.
20 What kind of people were those people that
21 you worked with?
22 A. They're a lot of very straight arrow kind of
23 people. I mean, you know, they were, you know, middle
24 to upper middle class type people, well educated. As
25 you point -- you know, the point you made before, they
0054
1 were of scientific bent. They were more scientists than
2 salesmen. The plant people were experienced milling
3 people, you know, but it was a very small group taking
4 it all and all.
5 But Larrison, who was the plant manager for
6 so long, you know, he was a -- he was the type of guy
7 that if you said that an atom bomb will drop in the
8 front yard, he'd say, well, the first thing we've got to
9 do is, you know, go out there and cover it up with dirt,
10 you know, really practical, straightforward sort of a
11 guy.
12 And he ran a tight ship, but I think, you
13 know, he -- I never worried about morale problems out
14 there. He was the kind of guy that was a good morale
15 builder, good leader, good natural leader. They were --
16 they were good people.
17 MR. BICKS: Thank you very much,
18 Mr. Rawlings.
19 MR. LANIER: Do you want to take a quick
20 break or do you want to keep going?
21 THE WITNESS: I -- I wouldn't mind just a
22 short break.
23 MR. LANIER: All right.
24 THE VIDEOGRAPHER: We're off the record. The
25 time is 11:33. Off the record.
0055
1 (Discussion off the record.)
2 THE VIDEOGRAPHER: This concludes tape one of
3 the deposition. Off the record 11:34.
4 (Recess taken from 11:34 a.m. to 11:43 a.m.)
5 THE VIDEOGRAPHER: This is tape two of the
6 deposition of James Rawlings. We're on the record.
7 The time is now 11:43 a.m. On the record.
8 CROSS EXAMINATION
9 BY MR. LANIER:
10 Q. Mr. Rawlings, my name is Mark Lanier. I met
11 you for the first time today, true?

12 A. I beg your pardon?
 13 Q. Mr. Rawlings, my name is Mark Lanier.
 14 A. Yes.
 15 Q. I met you for the first time this morning; is
 16 that true?
 17 A. Yes, you did. Yes.
 18 Q. I noticed that you called the Union Carbide
 19 lawyer Peter. I suppose you've met him before?
 20 A. Yes.
 21 Q. Once, twice, multiple?
 22 A. Well, I think before my last deposition we --
 23 we met twice before that deposition.
 24 Q. So you've given depositions for Mr. Bicks,
 25 the Union Carbide lawyer, before this one that we're
 0056 taking today?
 1 A. Yes.
 2 Q. One other time or how many?
 3 A. I've been deposed twice before today.
 4 Q. Okay. Did you -- in addition to these other
 5 times you've been with Mr. Bicks, were you with him
 6 before your deposition today?
 7 A. Yes, I was with him for a few minutes before
 8 we came in here.
 9 Q. But you didn't meet with him yesterday or --
 10 A. Yes, I did. I met with him yesterday, yes.
 11 Q. What for?
 12 A. We talked about, you know, just the general
 13 aspects of the case. I was interested in, you know --
 14 it was -- it seemed unusual with one of our customers
 15 bringing an action against us as opposed to, you know,
 16 somebody who was actually injured, suffered some sort of
 17 personal injury as a result of being exposed to
 18 asbestos.
 19 Q. So you all got together yesterday just to
 20 talk about the case in general?
 21 A. Yes.
 22 Q. How long did you spend?
 23 A. I'd guess an hour and a half, an hour and 45
 24 minutes. I didn't time it.
 0057 Q. Where -- where was this meeting?
 1 A. Here.
 2 Q. Here being at this hotel?
 3 A. At this hotel in another room on this floor.
 4 Q. Did Mr. Bicks show you any documents or
 5 anything like that getting ready for your testimony?
 6 A. He -- he showed me a couple of documents,
 7 yes.
 8 Q. What did he show you?
 9 MR. BICKS: Mr. Lanier, I don't mind you
 10 asking him that --
 11 MR. LANIER: Thank you.
 12 MR. BICKS: -- provided you're not going to
 13 suggest that it's a waiver of any work product.
 14 MR. LANIER: No. I'm -- I'm just asking
 15 questions.
 16 MR. BICKS: But if you're going to say that,
 17 then I'm going to instruct him not to answer just
 18 because I don't want any waiver of the work product
 19 privilege. If you're going to say you're not going
 20 to ever suggest that's a waiver, then you can ask
 21 him that.
 22 MR. LANIER: I am not suggesting you showing
 23 him documents is a waiver. I don't know what you've
 24 shown him, but I don't have any basis for suggesting
 0058 that right now. If we reach a point where I think
 1 it is a waiver, I'll tell you and you can say, well,
 2 don't talk about that or something.
 3 MR. BICKS: Fine.
 4 BY MR. LANIER:
 5 Q. What -- what did he show you?
 6 A. Well, I think it's fair to say that -- that
 7 some but not all of the documents that he had me look at
 8 this morning he showed me.
 9 Q. Okay. Kind of like a dry run through of what
 10 he was going to show you today or something?
 11 A. I suppose you could characterize it that way.
 12 Q. Okay. Did he talk to you about the general
 13 areas he was going to be asking you about?
 14 A. Yes, we -- we talked about them, yes.
 15 Q. I mean, did you feel like you needed to
 16 practice before you did the deposition?
 17 A. No, it wasn't so much practice, but, you
 18 know, it -- it kind of -- it's more putting the whole
 19 thing in perspective for me. I mean, I -- I didn't want
 20 to come in here, you know, absolutely at ends about
 21 what -- what we were -- which way this thing is going to
 22 go.
 23 Q. I understand, but one of the things I'm
 24

25 trying to determine is how much of your testimony has
0059
1 been what you know versus how much has been something
2 that's been fed to you by the Union Carbide lawyers.
3 You understand that distinction?
4 A. I understand that question, and I think that
5 I can answer it by saying it's the -- it's what I know,
6 the final analysis that I'm testifying to today.
7 Q. Well, let me give you an example.
8 You testified that Kelly-Moore was using
9 asbestos before Union Carbide sold Calidria to
10 Kelly-Moore; how do you know that?
11 A. How do I know that?
12 Q. Yes, sir.
13 A. Well, I -- I guess I would have to say that I
14 asked for that -- asked that question and I was shown
15 some information that they were receiving it.
16 Q. Who did you ask?
17 A. I asked Mr. Bicks.
18 Q. So that's information you know from talking
19 to the lawyer as opposed to what you knew before you met
20 with Mr. Bicks?
21 A. Well, you know, what I knew was -- was what I
22 knew about tape joint compounders in general.
23 Q. I'm not fussing with you. I'm just trying to
24 make sure I understand. That Kelly-Moore information is
25 something you knew from -- from what Mr. Bicks told you
0060
1 and showed you, it's not something you knew before
2 your -- your meeting with him; fair to say?
3 A. I think it would be fairer to say that I
4 would have answered the question without having seen
5 that information that to the best of my knowledge none
6 of our tape joint compounders came into the business
7 after we did.
8 Q. Do you know about Proko?
9 A. Proko I --
10 Q. Proko, P-r-o-c-o, a Texas tape joint compound
11 manufacturer you all sold asbestos to.
12 MR. BICKS: It's P-r-o-k-o.
13 MR. LANIER: K-o. What did I say?
14 MR. BICKS: C-o.
15 MR. LANIER: Thank you.
16 BY MR. LANIER:
17 Q. K-o.
18 A. It doesn't ring any bells.
19 Q. Do you know how many tape joint compound
20 manufacturers in Texas alone you all sold asbestos to?
21 A. No, I don't.
22 Q. Are you sitting here under oath and swearing
23 that all of them were making tape joint compounds before
24 you all start selling asbestos?
25 A. At the best of my knowledge, all of the tape
0061
1 joint compounders predated us in the business.
2 Q. Okay. But you don't know that. I mean, you
3 don't know even know who they are in Texas; isn't that
4 true?
5 A. Well, that's -- that's true, but I'm saying
6 to the best of my knowledge, that's -- that would be my
7 testimony.
8 Q. And by that you would mean to be telling the
9 jury that of the ones you know about, they were already
10 doing it, right?
11 A. I suppose that's a -- that's a fair enough
12 statement.
13 Q. All right. Why don't you list those
14 companies for me.
15 A. I couldn't list one.
16 Q. You can't list one tape joint compound
17 company that you know that was making tape joint
18 compound with asbestos before Union Carbide started
19 selling it?
20 A. I couldn't name them, but that's just a
21 problem of my memory. I -- you know, I remember going
22 over, you know, customer by customer the sales because I
23 was that interested in what was happening, and -- you
24 know, of tape joint compounders as a class of customers,
25 but I'll be darned if I remember the names.
0062
1 Q. All right. Well, let's go back over some of
2 the areas that you've testified about so far, sir.
3 First I'd like to talk to you a little bit about your
4 personal information. Okay?
5 A. (No response.)
6 Q. Is that all right if we --
7 A. Yes.
8 Q. All right. First of all, your educational
9 background is not really as a chemical expert, is it?
10 A. No, it isn't.
11 Q. In fact, truth be told to the jury, you're a

12 lawyer?
13 A. That's true.
14 Q. You have a law degree?
15 A. Yes.
16 Q. You went to work for Union Carbide as an
17 attorney?
18 A. Yes.
19 Q. You'd been out of law school a couple of
20 years, and they hired you to go on staff at their legal
21 department in New York, right?
22 A. That's correct.
23 Q. In fact, they didn't have just you, they had
24 a bunch of lawyers, didn't they?
25 A. Yes.

0063
1 Q. And not just in New York, you all had lawyers
2 worldwide, didn't you?
3 A. Yes.
4 Q. And you worked as a lawyer at Union Carbide
5 for years before they moved you over in that asbestos,
6 didn't you?
7 A. Well, I'd -- I'd worked there -- I came on
8 board in 1960, and I went over in -- in '76 to the
9 Metals Division and I -- you know, I was through
10 practicing law at that point.
11 Q. All right. Well, when I say for years,
12 that's more than ten years, that's fifteen, more than
13 fifteen, isn't it?
14 A. I just misspoke. I went over in '69.
15 Q. Okay. That's more like what I was thinking
16 first.
17 You left in -- in '76, didn't you?
18 A. Yes.
19 Q. All right. So we've got years. We've got
20 almost ten years, nine years, you did legal work before
21 they put you over --
22 A. No, no. You've got from '60 to '69.
23 Q. Isn't that nine years?
24 A. Well, it is almost nine years, yes.
25 Q. '60, '61, '62, '63, '64, '65, '66, '67, '68,

0064
1 '69. You're right at ten years, aren't you?
2 A. Yes, that's true.
3 Q. Okay. Was that typical of Union Carbide to
4 move ten-year lawyers over into chemical divisions like
5 asbestos?
6 A. Well, they moved me over in financial control
7 and -- and personnel and government relations. Those
8 were things that, you know, I didn't have any trouble
9 with the transition.
10 Q. Well, you all had a lot of legal issues come
11 with up with asbestos, didn't you?
12 A. None that I was ever involved with.
13 Q. Are you sure?
14 A. Yes.
15 Q. You don't think, for example, you wrote a
16 letter to the Degussa people over in -- in France
17 threatening legal action in 1972 --
18 A. Yes.
19 Q. -- over asbestos?
20 A. I wasn't -- I wasn't the lawyer. I wasn't
21 practicing law at that point.
22 Q. I didn't say you were doing it as a
23 practicing lawyer, sir. I said you all had a lot of
24 legal issues over there in asbestos, didn't you, and you
25 said no?

0065
1 A. No, I -- I thought you were talking about
2 during the time I was practicing law and then --
3 Q. No. I mean when they moved you as a ten-year
4 lawyer over to asbestos, you in asbestos had legal
5 issues going on during your tenure there, your time
6 there, right?
7 A. That's correct, yes.
8 Q. Okay. You were asked questions about the
9 history of Union Carbide; you gave us some data, right?
10 A. Yes.
11 Q. There were some things you left out I'd like
12 to talk to you about. Okay?
13 A. Okay.
14 Q. First of all, are you just a history buff or
15 is this more stuff that you were kind of told by
16 Mr. Bicks?
17 A. No, no, no. That's, you know, something that
18 always interested me. The history of Union Carbide
19 fascinated me, as a matter of fact.
20 Q. Didn't you know the gentleman Edward Acheson?
21 A. Yes, I know him.
22 Q. Who was Mr. Acheson?
23 A. Well, when you say do I know Mr. Acheson, the
24 name is familiar to me, and I think he was somebody who

25 was in the -- the chemicals, plastics area, an area that
0066

1 I never worked in, per se.
2 Q. Well, actually, Mr. Acheson is who started
3 Union Carbide in the 1880s after he left the Carborundum
4 Company. Did you know that?
5 A. No, I didn't know that, no.
6 Q. He's the one that established the plant on
7 Niagara Falls. It was the third company to take
8 electricity off of Niagara Falls. Did you know that?
9 A. No. You know, I knew that was -- we were
10 involved in it, but I didn't have the man's name.
11 Q. Yes. There are a couple of biographies out
12 on him. Since you're interested in the area, you ought
13 to grab them and read them. He's a fascinating
14 individual.
15 A. I'll do that.
16 Q. In your history knowledge, you left out the
17 Hawks Nest catastrophe. Did you know about that?
18 A. I did not know about that until very
19 recently.
20 Q. When did you find out about the Hawks Nest
21 catastrophe?
22 A. Probably in the last month or so.
23 Q. And how did you come by that knowledge?
24 A. Again, that was -- Mr. Bicks mentioned it to
25 me.
0067

1 Q. Did he tell you -- well, I shouldn't ask it
2 that way.
3 Are you aware of the fact that that's the
4 largest industrial disaster in the history of the United
5 States of America even today?
6 MR. BICKS: Objection to the form.
7 A. I had no idea.
8 Q. Did you know that thousands of people died
9 from dust disease doing work for Union Carbide?
10 MR. BICKS: Objection to form.
11 A. No, I didn't.
12 Q. So that kind of history knowledge of what
13 Union Carbide did in the -- the '30s and -- and dust
14 disease and -- and the people that died from it you
15 never learned about in your history class at Union
16 Carbide or whatever; is that true?
17 MR. BICKS: Objection to the form.
18 THE WITNESS: Peter, I didn't hear what you
19 said.
20 MR. BICKS: Objection to the form.
21 THE WITNESS: Okay.
22 MR. BICKS: You can go ahead.
23 A. You're right. I never -- I hadn't heard
24 about it.
25 Q. Now, when you talked to Mr. Bicks about a
0068

1 month ago, was that before a different deposition or
2 getting ready for this one?
3 A. No, raising the possibility of this one.
4 Q. So in addition to meeting with him yesterday
5 and today for this one, you've talked to him even a
6 month ago, true?
7 A. Yes.
8 Q. And in the process of that, you were told a
9 little bit about the Hawks Nest catastrophe that
10 happened out in West Virginia?
11 MR. BICKS: Objection to the form.
12 BY MR. LANIER:
13 Q. True?
14 A. He asked me if I was aware of it, and I told
15 him no.
16 Q. Have you done any looking in on that or read
17 any of the books about that?
18 A. No, I have not.
19 Q. As Mr. Bicks was asking you questions about
20 all of the products Union Carbide has made, he mentioned
21 bug spray. Do you remember that?
22 A. Yes, I did.
23 Q. That's a chemical, a pesticide-type product?
24 A. Yes.
25 Q. Is that what Union Carbide was making in
0069

1 Bhopal, India, when that explosion killed so many
2 people?
3 MR. BICKS: Objection to the form.
4 A. It -- it was a Sevin -- it was a Sevin Light
5 material. That was our -- our trade name for it, Sevin.
6 Q. S-e-v-i-n?
7 A. Right.
8 Q. And that's the bug spray or the
9 pesticide-type materials that you all make, right?
10 A. Yes.
11 Q. And that's what was being made out in Bhopal,

12 India --
13 A. Yes.
14 Q. -- at the plant that exploded?
15 A. Yes. It didn't explode, I mean, you know,
16 but --
17 Q. What happened?
18 A. Well, it -- it had a runaway gas making
19 accident, but there was no explosion.
20 Q. How many people killed in that?
21 A. Probably initially on the order of 2,000.
22 Q. Totally?
23 A. I've seen estimates as high as ten.
24 Q. When you recited the history of the company
25 for the jury, you didn't mention anything about the
0070
1 Industrial Hygiene Foundation.
2 Do you know about your company's founding of
3 that and its active involvement in that over the
4 decades?
5 A. No, I don't.
6 Q. Do you know who a Mr. J.W. McLaughlin was?
7 A. No, I don't.
8 Q. He served on the board of trustees for the
9 Industrial Hygiene Foundation in the '40s, and we've got
10 a picture we've shown the jury of him in the
11 Johns-Mansville boardroom, front row, center seat. Are
12 you familiar with him at all?
13 MR. BICKS: Object to the form.
14 A. No.
15 Q. Are you familiar with the company's history
16 producing asbestos in Bakelite?
17 A. No.
18 Q. Do you know what Bakelite is?
19 A. Yes.
20 Q. Did you know that Union Carbide has been the
21 Bakelite producer since at least the '30s?
22 A. Yes, I did know that.
23 Q. Did you know Union Carbide was putting
24 asbestos in Bakelite for decades and decades?
25 A. I did not know that.
0071
1 Q. When you talked about the radioisotopes and
2 the radar and the synthetic gems and all of these other
3 places Union Carbide was making money, did you know
4 those because they'd been told to you by somebody or did
5 you actually work in those divisions?
6 MR. BICKS: Objection to the form.
7 A. Some of both. You know, I -- I worked with
8 the gemstone people very closely. I at some point in
9 time had worked with the people doing radioactive
10 isotopes. That is all firsthand information.
11 Q. I mean, you weren't working during World War
12 II when supposedly Union Carbide made money by selling
13 some product for radar, were you?
14 MR. BICKS: Objection to the form.
15 A. No, but I just -- it's something I -- I heard
16 in the course of, you know, people telling me about it.
17 Q. So people have told you about making products
18 for the radar in World War II, but they haven't told you
19 about the Hawks Nest incident or Industrial Hygiene
20 Foundation or all of the asbestos in Bakelite or any of
21 those other things?
22 A. No, they have not told me about those things.
23 Q. When you said that Union Carbide was looking
24 at different places to put Union Carbide's asbestos,
25 looking at new markets, do you remember that testimony?
0072
1 A. Yes.
2 Q. You left out some of the new markets Union
3 Carbide looked at.
4 Did you know that Union Carbide tried to get
5 people to put asbestos in facial tissues, Kleenex?
6 A. Not on my watch.
7 Q. Well, it happened, I guess, in the late '60s,
8 early '70s, '71, '72; were you there?
9 MR. BICKS: Objection to the form.
10 A. You know, I -- I became involved, I think, in
11 sometime late '71 with the asbestos business as a
12 principal.
13 Q. Okay. Did you know that Union Carbide tried
14 to peddle asbestos in feminine products?
15 MR. BICKS: Objection to the form.
16 A. Not on my watch.
17 Q. Did you know Union Carbide tried to put
18 asbestos in paper?
19 A. Yes.
20 Q. Was that on your watch?
21 A. It -- it was something that was discontinued
22 on my watch.
23 Q. Did you know Union Carbide tried to get
24 asbestos in plaster of paris?

25 A. No.

0073 Q. Did you know Union Carbide tried to get
2 asbestos in Play-Doh that our kids use?
3 MR. BICKS: Objection to the form.

4 A. No.

5 Q. Did you know Union Carbide tried to get
6 asbestos in crayons, Crayolas?
7 A. No.

8 Q. Now, when exactly was your watch?
9 A. Well, first of all, I went to the Metals
10 Division in '69.

11 Q. Okay.

12 A. And the -- at that point in time the asbestos
13 business was still over on the chemical side of the
14 house. Sometime between '69 and late 1971 when I became
15 involved in asbestos, it came into Metals Division, and
16 in late '71 I became involved with it as an extra duty.
17 I still had the administrative functions that I'd gone
18 over there with, but I took over responsibility for the
19 asbestos business.

20 Q. Okay. When you were asked questions by
21 Mr. Bicks about whether you were familiar with the term
22 a Carbider, do you remember those questions?
23 A. Yes.

24 Q. You gave a story about how the Carbider term
25 was used by evidently a woman out of South Africa?

0074 A. No, an African-American girl who was a
2 student.
3 Q. Okay. Was that when people were upset with
4 the way Carbide was supporting the white government in
5 South Africa?
6 A. Well, they were upset with the method we were
7 opposing the apartheid government.
8 Q. Because the method sure appeared to the whole
9 world like you all were just profiting from it, true?
10 A. Well, I think that isn't true. Basically
11 speaking, the Reverend Leon Sullivan, who was a, you
12 know, a great mover in the civil rights movement, formed
13 a group of corporations, and he said, you know, I know
14 that it's difficult for you just to turn tail and leave,
15 but if you're going to stay, you're going to have to do
16 things that support the majority, the rights of the
17 majority in South Africa, their economic progress and to
18 state vocally your objection to apartheid rules that
19 apply in the workplace.
20 And Union Carbide was an initial signature to
21 that group which later included about 35 US
22 corporations.

23 Q. Well, while you talked about a Carbider, you
24 said it's a fine company and that's the reputation that
25 it had and that's why people were proud to be called

0075 Carbidersdo you remember that testimony?
2 A. Yes, I do.
3 Q. You understand back during this same time
4 period, let's say from 1959 to 1968, Union Carbide had
5 the absolute worst safety record of any of the big seven
6 chemical companies?
7 A. You know, I've looked at that data before.
8 It's a -- I would say this, that it wasn't true of
9 Mining and Metals Division.

10 Q. Well, actually it -- it was if you look at
11 the data.

12 MR. LANIER: What's the next exhibit number,
13 ma'am, 8?
14 COURT REPORTER: I think so.
15 MR. LANIER: Is that right, Dara?
16 MS. HEGAR: Yes.
17 MR. LANIER: Thank you.
18 (Rawlings Exhibit No. 8 was marked for
19 identification.)
20 BY MR. LANIER:
21 Q. Okay. Sir, I'm going to give you an exhibit
22 that we're going to mark as Exhibit Number 8 and ask you
23 to take a look at it. There you go.
24 Have you seen that exhibit before?
25 A. Yes, I recall seeing it.

0076 Q. What's the title on that exhibit for the
2 jury?
3 A. Our ten-year safety failure.
4 Q. Our ten-year safety failure?
5 A. Yes.
6 Q. If you'll take a moment to get familiar with
7 that exhibit, if you're not already, I'd like to ask you
8 a few questions about it. You tell me when you're
9 ready.
10 A. Well, I was looking particularly at Mining
11 and Metals Division, and, of course, the -- the mining

12 operations came over from the Nuclear Division and for
13 some reason the Nuclear Division, you know, had a high
14 frequency rate.
15 If you read it, the paragraph on Mining and
16 Metals, it says it is also quite notable that M & M's
17 coal mining frequency last year was only five percent.
18 Well, the part that I'm getting about, it
19 says, the effect of the assumption of Nuclear's ore
20 mining operations was included after 1964. This boosted
21 M & M's 1965 frequency substantially for that year and
22 the next. Even with this handicap, the M & M frequency
23 was brought down to a level in 1968 nearly in line with
24 its pre-ore mining experience. It is quite -- also
25 quite notable that M & M's coal mining frequency last
0077
1 year was only five percent of the national coal mining
2 average.
3 There were no disabling injuries at all in
4 four of the five coal mines. Its Deremo ore mine, which
5 is a Colorado plateau, also had an outstanding frequency
6 record, winning the Sentinel of Safety Award for 1968.
7 M & M's ore mines have won this three times in the last
8 seven years.
9 You know, I look at this thing and I have no
10 idea why the frequency rate for Fibers and Fabrics and
11 for UC Canada were so high, but I can assure you that if
12 you would compare Union Carbide Mining and Metals
13 Division to other mining companies, you wouldn't see
14 this disparity.
15 MR. LANIER: Objection; nonresponsive.
16 BY MR. LANIER:
17 Q. All right, sir. What I'd like to do is go
18 over some of these issues with you. You've read the
19 front page to the jury as the title our ten-year safety
20 failure.
21 A. Yes.
22 Q. Also on that front page it says, of course,
23 the name Union Carbide and says company confidential; is
24 that right?
25 A. Yes, that's written on there.
0078
1 Q. Now, if you'll turn one page over to the
2 summary page, I'd like you to look at a couple of things
3 with me.
4 A. Okay.
5 Q. It says, first sentence, simply stated, our
6 safety performance has shown no improvement for more
7 than ten years as measures by the most significant
8 yardstick, disabling injury frequency. Do you see where
9 I am?
10 A. Yes.
11 Q. I'd like to concentrate on the next sentence.
12 It says, Furthermore, in the last ten years we've become
13 the most hazardous employer in the Big Seven chemicals
14 group, maiming people at more than twice the rate of the
15 others, and last year we let more accident dollars go
16 down the drain or up in smoke than any one of these
17 major competitors. Did I read that right?
18 A. Yes.
19 Q. Some details of that summary are given on the
20 next page, if you'd turn it over. That very first
21 paragraph, the last sentence or two in the first
22 paragraph where it starts with, "over the last", do you
23 see that? It's the fourth line down.
24 A. Yes. Right.
25 Q. It says, Over the last ten years it has
0079
1 averaged 2.2 and it wound up '68 at 2.24. Do you see
2 where that is?
3 A. Yes.
4 Q. All right. Look at that next sentence,
5 That's 341 persons disabled last year, seven of them
6 killed. Did I read that right?
7 A. Yes, you read it right.
8 Q. Now, in the third paragraph the question is
9 asked at the start of that third paragraph, But has our
10 safety been better than those of other predominately
11 chemical companies who are more nearly like us? Do you
12 see that question? Third paragraph.
13 A. Are you taking about the third paragraph?
14 Q. It's the fourth paragraph, sir. I'm sorry; I
15 miscounted.
16 A. Okay.
17 Q. The fourth paragraph says, but has our safety
18 been better than those of other predominately chemical
19 companies who are more nearly like us. Do you see that
20 question?
21 A. Yes.
22 Q. What's the answer?
23 A. No, we have been twice as bad as their
24 combined average over the last ten years.

25 Q. In fact, it says you all ranked seventh in
0080
1 the Big Seven, right behind Dow Chemical, which
2 evidently was number six; is that right?
3 MR. BICKS: Objection to the form.
4 A. Yes, that's what it says.
5 Q. Okay. Now, sir, is that a safety record that
6 you think everybody was proud of at the company?
7 A. You know, I -- I wouldn't have thought so,
8 but then that was probably the reason for this document,
9 to --
10 Q. Well, when you --
11 A. -- initiate change, but I would still draw
12 your fact -- your attention to the Mining and Metals
13 portion of this.
14 Q. Well, sir, it says in that same paragraph
15 that had the question, that fourth paragraph, about the
16 middle paragraph --
17 A. Yes.
18 Q. -- that this MCA reports only frequency for
19 certain segments of the company, the chemicals and
20 plastics, the food products and the metals part of the
21 Mining and Metals. Do you see that?
22 A. Yes.
23 Q. Then it says, So that only covers 39 percent
24 of our employees, true?
25 A. (No response.)
0081
1 Q. True?
2 A. Yes. And I --
3 Q. But if you look, sir, it says, This puts our
4 best foot forward. The other 61 percent wasn't even
5 that good. Evidently you all are hurting more people in
6 the -- the non-metals part of Mining and Metals than in
7 the other divisions, right?
8 MR. BICKS: Objection to the form.
9 A. I don't -- I don't think that statement is
10 correct.
11 Q. All right. So you think that this company
12 confidential ten-year safety failure got that data
13 wrong?
14 A. I think they did.
15 Q. Okay. So is that just based on your feeling
16 or do you have any hard data I can look at?
17 A. I can probably go develop some hard data, but
18 it's -- it just doesn't jibe with the -- with the broad
19 picture that I was familiar with.
20 Q. Well, it doesn't jibe with what you told the
21 jury, that there was a sense of safety and concern at
22 all levels of the company that everybody was proud of,
23 does it?
24 A. I don't -- I don't withdraw that statement at
25 all.
0082
1 Q. All right. Well, let's keep going. I'll see
2 if I can get you to in a little bit.
3 In the next set of questions you were asked
4 why are you testifying today, and your answer included
5 Union Carbide was a small potato in asbestos, they came
6 late, there was near hysteria by the media, and it's
7 your honor in a sense to put all of that into
8 perspective. Is that a fair synopsis?
9 A. That's a fair synopsis.
10 Q. All right. I want to take apart those three
11 ideas for a minute. First of all, Union Carbide came
12 late. You didn't know Union Carbide was peddling
13 asbestos in Bakelite in the '30s, in the '40s, in the
14 '50s, in the '60s?
15 A. You know, certainly it wasn't -- it wasn't
16 asbestos they produced, but, you know --
17 Q. No, they'd buy it and stick it in the -- the
18 Bakelite and ship it out and sell it all over the place.
19 A. Where were they mining it?
20 Q. Union Carbide didn't mine it. They'd buy it
21 from the other mines --
22 A. Okay.
23 Q. -- and put it in their product and ship it
24 out.
25 A. Okay. It's my answer that I didn't know they
0083
1 put asbestos in Bakelite.
2 Q. Yes.
3 A. Okay.
4 Q. I mean, they've been doing that for decades.
5 They weren't latecomers to the asbestos field; did you
6 know that?
7 A. Well, that's -- you know, I didn't know that,
8 no.
9 Q. Did you know in 1958 Union Carbide sat on the
10 legal committee for the Industrial Hygiene Foundation?
11 A. No, I did not know that.

12 Q. Did you know in 1958 that Industrial Hygiene
13 Foundation funded a study on the hazards of asbestos
14 mining?

15 MR. BICKS: Objection to the form.

16 A. I think I was generally aware that they did
17 in 1958.

18 Q. Did you know that you all's Industrial
19 Hygiene Foundation study you all -- by you all here, the
20 people doing the study at least -- distorted the results
21 before they published it?

22 MR. BICKS: Objection to the form.

23 A. Well, I doubt that, but then I don't know.

24 Q. All right. When you say that you all were a
25 small potato, that wasn't your goal; your goal was to
0084 becomes a big asbestos seller, wasn't it?

2 A. Well, it was only -- we were hoping it would
3 only be limited by the plastics market, and that still
4 all depends on what you define as large. Certainly
5 larger than -- we had hoped for something larger than it
6 became, but --

7 Q. Well, you were looking to grow, weren't you?

8 A. Certainly we were looking to grow.

9 Q. You wanted to be bigger?

10 A. Bigger, yes.

11 Q. You wanted more people to buy your asbestos?

12 A. But, you know, basically speaking, that would
13 be limited by the number of people who were -- could use
14 thixotropes and resin-grade asbestos.

15 Q. Well, sir, you all weren't just putting them
16 in those products. You were trying to put them in
17 papers. You were trying to put them in tape joint
18 compounds.

19 You were putting that product in lots of
20 different places, weren't you?

21 A. In very minimal quantities -- quantities.

22 Q. Well, but you all were looking to expand it,
23 weren't you?

24 A. We were looking to expand. When we really
25 thought about major expansion in the -- in the
0085 resin-grade materials, we were hoping we could keep a
2 modest -- a modest base in the other people, the other
3 applications, in order to, you know, broaden the -- the
4 absorption of cost.

5 Q. Well, sir, you all were trying to get GE to
6 put it in a bunch of products, weren't you?

7 A. Like -- I don't know. You'd have to define
8 to me what products.

9 Q. I'm just telling you I read through your
10 sales reports and I see you all are trying to get GE
11 to -- to put it in because you think you can just sell
12 gargantuan amounts to General Electric if you can get it
13 past their safety department and medical department?

14 MR. BICKS: Objection to the form.

15 A. I don't remember that we ever sold anything
16 to GE in any quantity.

17 Q. Do you know you all were even selling it the
18 Castor Oil Company?

19 A. The Castor Oil Company?

20 Q. Yes.

21 A. No, I don't remember that one.

22 Q. You all had given the Castor Oil Company
23 evidently assurances that your asbestos was
24 non-carcinogenic. Did you know that?

25 MR. BICKS: Objection to the form.
0086

1 A. I can't believe that.

2 (Rawlings Exhibit No. 9 was marked for
3 identification.)

4 Q. I'm going to show you an exhibit that we'll
5 mark as Exhibit Number 9 to your deposition. Take a
6 moment -- it's a very difficult copy to read, so if you
7 can't read it, tell me, but do you see that second
8 paragraph where it talks about using Union Carbide's
9 asbestos?

10 A. Yes, I see it.

11 Q. Do you see where it says, We have their,
12 meaning Union Carbide's, assurance that that asbestos is
13 non-carcinogenic?

14 A. All I can say is Mr. Smith, whoever he was,
15 was out on a frolic of his own, I would say.

16 Q. Do you think he just made that up?

17 A. I -- I don't know how to explain it, but that
18 certainly was at odds with anything we were putting out
19 to the public at that point in time.

20 Q. Well, at what point in time was that, 1972?

21 A. Yes, sir.

22 Q. Did you know Mr. Blair Ingalls?

23 A. I know Blare Ingalls, yes.

24 Q. When you were given the background of the

25 outstanding sales department at Union Carbide, you
0087
1 talked about how they all had science backgrounds. You
2 didn't mention Mr. Ingalls?
3 A. I didn't mention anybody by name.
4 Q. You thought you mentioned Mr. Myers and
5 Mr. Rhodes both by name?
6 A. Yes, I did. Yes.
7 Q. Okay. You didn't mention Mr. Ingalls, did
8 you?
9 A. No, I didn't mentioned any of the others.
10 Q. What were the outstanding scientific
11 background credentials of Mr. Ingalls?
12 A. You know, the only thing I know is he came
13 over from that R & D group, and the R & D group, as I
14 understood it, was -- was all scientifically based by
15 education, and I would be surprised if Mr. Ingalls didn't
16 fall in that category.
17 MR. LANIER: Well, can I have another copy of
18 Blare Ingalls' memo, please?
19 Q. Have you ever seen the -- the type of
20 materials Mr. Ingalls prepared for the sales department?
21 A. Yes, I have seen things he's prepared.
22 Q. Did you see his -- did you see his memo on --
23 yes, I may have it in here somewhere.
24 Did you see his memo on what to do when
25 customers call in worried about asbestos sales?
0088
1 Let me put a sticker on it and hand it to you
2 so you can look at it. We'll mark it as Exhibit Number
3 10 to your deposition.
4 (Rawlings Exhibit No. 10 was marked for
5 identification.)
6 BY MR. LANIER:
7 Q. There you go, sir. Have you seen that memo
8 before?
9 A. Yes, I have.
10 Q. When did you first see that memo?
11 A. It was brought to my attention while I was --
12 by Mr. Myers while I was in charge of the asbestos
13 business.
14 Q. Did you put out a response to that?
15 A. Mr. Ingalls was reprimanded and told never to
16 write anything like that again.
17 Q. Well, not just write it. That shouldn't be
18 the attitude. It's not a question of whether he
19 documents it. It's a question of what he's doing, isn't
20 it?
21 A. Well, I think, you know, you've got to look
22 at it in perspective. Here you've got a guy who, you
23 know, can't go into a purchasing agent because
24 purchasing agents are notoriously geared in by all sorts
25 of things, by price primarily, but they are very nervous
0089
1 about the media frenzy.
2 I can see where Ingalls was -- was frustrated
3 by that, and he talks about, you know, trying to jolly
4 these guys along and -- and to try to -- what he was
5 trying to do was get them into some sort of scientific
6 discussion about the hazards of asbestos, and he was
7 frustrated because he couldn't do it.
8 And his frustration comes out with a -- with
9 a mistake like this memorandum, and it was a mistake and
10 we corrected it. It had never happened again.
11 Q. Sir, I'll go back to my original question.
12 He didn't make a mistake by putting it into a memorandum
13 and writing it, the whole attitude is a mistake, isn't
14 it?
15 A. Yes, but it was his attitude and -- and not
16 the attitude of the business or the other -- other
17 members of the sales group.
18 Q. Well, did you issue a -- a written response
19 to this? Did you tell Mr. Byrne or Mr. Dickson or
20 Mr. Klober or Mr. Norris or Mr. Myers or Mr. Rhodes or
21 any of the people who received this memorandum to
22 disregard it?
23 A. I can tell you that they -- they were
24 informed of that, whether I did it in writing or not,
25 but they knew it wasn't the -- that sort of thing was
0090
1 not to be allowed.
2 Q. Well, when you were telling this jury, being
3 asked questions by the Union Carbide lawyer, about how
4 wonderfully well your -- your sales department was
5 behaved and how professional and scientific they were
6 and how proud you were of them, you never mentioned this
7 memo, did you?
8 A. Because it's an anomaly. It just popped up
9 one time and disappeared.
10 Q. Set the mood; controlling the conversation is
11 paramount; assure the customer the new law is reasonable

12 and within the limits of practicality; it seems to have
13 a soothing effect on the emotionally irate.
14 A. What -- what do you find wrong with that? I
15 mean, that part isn't the part that I objected to.
16 Q. If the customer is persistent and threatens
17 to eliminate asbestos, a certain amount of
18 aggressiveness may be effective.
19 A. Okay. Now you're getting into the part that
20 I objected to.
21 Q. Now, listen to this. He doesn't try to -- to
22 move into a scientific knowledge. He says, words and
23 catch phrases like premature, irrational or avoiding the
24 inevitable will sometimes turn the table; the main
25 objective is to keep the customer on the defensive, make
0091
1 him justify his position; most customers who call are on
2 the offensive, often prepared with loaded questions,
3 expecting an argument; change the mood before discussing
4 anything pertinent; alternating between an aggressive
5 and submissive attitude is confusing and allows you to
6 bide your time; refuse to argue; be humble and when
7 they're sufficiently calm, sometimes even embarrassed,
8 make your point forcefully; don't cover too much ground
9 in one confrontation, even rabies shots are spaced in
10 moderate intervals.
11 Don't you find that offensive?
12 A. Yes, I do.
13 Q. You didn't fire this guy when you found out
14 about it?
15 A. No, I did not fire him.
16 Q. You didn't write up a reprimand to go in his
17 file?
18 A. There is a reprimand in his file. I'm sure
19 of that.
20 Q. Are you?
21 A. You know, I -- I'll put it this way. I would
22 be very surprised if there isn't one there.
23 Q. Would you be surprised to find out we've
24 asked for his file and we're not allowed to see it?
25 MR. BICKS: Objection to the form.
0092
1 A. You know, I'm surprised, yes.
2 Q. Don't you think if there was a reprimand on
3 this, your company would want that jury to see his file?
4 MR. BICKS: Objection to the form.
5 A. Yes, I would surmise that would be the case,
6 but I will come back to this. The -- the preliminary
7 statement that he makes in there about the, you know,
8 you try to assure them that the law is reasonable, that
9 they can function within the -- within the law was
10 certainly the position that we were taking. There's no
11 mystery about that.
12 The fact that, you know, certain purchasing
13 agents were out of hand rejecting those arguments put
14 forth on a scientific basis I think accounted for
15 Mr. Ingalls' frustration that manifests itself in this
16 particular document.
17 Q. So in light of that -- by the way, what was
18 Mr. Ingalls' job responsibility?
19 A. I'm trying to think what his title was,
20 special projects or something like that. He -- he --
21 but he was essentially just another salesman.
22 Q. Okay. New subject. Let's talk about Degussa
23 for a minute.
24 A. Degussa.
25 Q. Say it again?
0093
1 A. Degussa.
2 Q. Degussa?
3 A. Yes.
4 Q. D-e-g-u-s-s-a; is that right?
5 A. That's right.
6 Q. All right. Degussa was a company over in
7 France, wasn't it?
8 A. Yes.
9 Q. And Degussa was the French company that sold
10 your Calidria asbestos over in Europe, right?
11 A. The resin grade.
12 Q. Yes. You all called it RG, resin grade,
13 true?
14 A. Right.
15 Q. And it was Degussa that in 1971 quit selling
16 your asbestos, didn't they?
17 A. That's correct.
18 Q. And the reason Degussa quit selling your
19 asbestos is because Degussa believed that it could be
20 hazardous to the health, true?
21 A. That's what they said.
22 Q. They said that they thought it was noxious,
23 n-o-x-i-o-u-s, and probably subject to cancer, right?
24 A. That's what they said.

25 Q. In other words, they believed that your
0094
1 asbestos would not only make people sick, but it causes
2 cancer and they weren't going to sell it, right?
3 A. That's what they said. That's not
4 necessarily what they thought.
5 Q. Well, okay. That's certainly what they put
6 into writing, isn't it?
7 A. That certainly is what they put in writing.
8 Q. And when they put that into writing --
9 MR. LANIER: Let's mark these exhibits so
10 that we can look at them. Bear with me one minute.
11 I want to make sure I get them in a good
12 chronological order.
13 MR. BICKS: Mark, let's just take a
14 one-minute break while you mark them. Is that all
15 right?
16 MR. LANIER: I mean, I'm -- I'm ready to go.
17 If you need to take a break, but if you're going to
18 take a break and talk to him about this, I don't
19 think that's proper.
20 MR. BICKS: I can assure you I won't.
21 MR. LANIER: Okay. I'll take you at your
22 word.
23 THE VIDEOGRAPHER: Off the record. The time
24 is 12:30 p.m.
25 (Recess taken from 12:30 p.m. to 12:34 p.m.)
0095
1 THE VIDEOGRAPHER: We're back on the record.
2 The time is now 12:34. On the record.
3 (Rawlings Exhibit No. 12 was marked for
4 identification.)
5 BY MR. LANIER:
6 Q. Sir, I'd like to give you a document that
7 we've marked as Exhibit Number 12. I apologize for
8 having to kind of toss it over there. I'm not throwing
9 it at you. I'm just trying to get it to you so you
10 don't have to get up.
11 Do you have that in front of you now?
12 A. Yes, I do.
13 Q. Okay. Sir, if you look at that, does it have
14 a date on it?
15 A. December 7th, '71.
16 Q. Okay. And this is a letter from Degussa
17 itself that you all have translated out of German; is
18 that correct?
19 A. That's correct.
20 Q. So if I was to show the jury the original
21 letter, unless they spoke German, it wouldn't make any
22 sense to them, true?
23 A. That's probably true.
24 Q. But you feel pretty confident that at least
25 this is the copy of the letter that you read unless you
0096
1 read German, right?
2 A. (No response.)
3 Q. Do you read German, sir?
4 A. No, I do not.
5 Q. So you feel pretty confident that this
6 translation was the -- the one that you would have
7 gotten or at least read, true?
8 A. I -- I think that's correct.
9 Q. All right. If we look at this, this looks
10 like a form letter that was being sent out by Degussa to
11 customers of the Union Carbide asbestos, doesn't it?
12 A. Yes, it does.
13 Q. And that's what you understood it to be when
14 you got this back in the '70s, right?
15 A. Yes.
16 Q. And this says to the customers that Degussa,
17 quote, decided to withdraw Union Carbide's asbestos
18 products from the market between now and the end of the
19 year.
20 Do you see where it says that in the second
21 paragraph?
22 A. Yes.
23 Q. Then it continues, we are doing so mainly
24 because of our misgivings regarding the possible health
25 effects of asbestos fibers. Did I read that right?
0097
1 A. That's correct.
2 Q. It continues, It has long been an established
3 fact that the inhaling of asbestos dust in larger
4 amounts can cause asbestosis, which it's possible to
5 prevent, however, by adherence to the relevant safety
6 regulations. Are you still with me?
7 A. Yes.
8 Q. Only more recently has statistical evidence
9 begun to build up from which it appears asbestos dust
10 cannot be ruled out as a possible cause of lung and
11 peritoneal cancer, even when these regulations are

12 observed. Did I read that right?
13 A. Yes, you read it right.
14 Q. We consider it our duty, therefore, to
15 withdraw this material from the market, although as far
16 as we know, not all who offer such products for sale
17 share our misgivings. Did I read that right?
18 A. That last sentence is quite true.
19 Q. Now, sir, you wrote these people, didn't you?
20 A. Yes.
21 Q. And you wrote them within the next month or
22 two, I think in January; is that right?
23 A. That's correct.
24 Q. January 11th, 1972, does that sound about
25 right to you?
0098
1 A. It sounds about right, yes.
2 Q. All right. Let's get your letter out and
3 look at it. Let me start by asking you about an
4 internal letter you did.
5 MR. LANIER: I'm up to what number?
6 MS. HEGAR: You're up to 13.
7 MR. LANIER: I've not given him 12?
8 MS. HEGAR: You've given him 12, but you
9 skipped 11.
10 MR. LANIER: Well, where did I put 11?
11 MS. HEGAR: 11 is here, it looks like.
12 (Rawlings Exhibits No. 11 and 12 were marked
13 for identification.)
14 BY MR. LANIER:
15 Q. Sir, let me give you 11, just so I get all of
16 this right and they don't yell at me afterwards. This
17 looks like a letter that you all think the date may have
18 been November 18th, but you're not certain. It's
19 certainly a letter from Degussa to a client, and it's
20 one that says that the Union Carbide product A-28 is
21 noxious and probably subject to cancer. Do you see
22 that?
23 A. Yes.
24 Q. You'd seen that letter as well, I'm assuming?
25 A. Yes.
0099
1 (Rawlings Exhibit No. 13 was marked for
2 identification.)
3 BY MR. LANIER:
4 Q. Somewhere in the midst of this you wrote a
5 letter to a Dr. Milton Stern, who is just listed as on
6 the 39th Floor. I'm going to give you that as Exhibit
7 Number 13. Is that your letter?
8 A. (No response.)
9 Q. Is that your letter?
10 A. That's correct.
11 Q. You said to Dr. Stern -- by the way, is
12 Dr. Stern a Union Carbide doctor?
13 A. Yes. He's a Ph.D.
14 Q. Okay. 38th Floor, I assume that's --
15 A. He was at that time the executive vice
16 president of the Mining and Metals Division.
17 Q. When it says 39th Floor, I don't understand
18 that. Were you all just --
19 A. That's just where the Mining and Metals
20 Division was located.
21 Q. Okay. And you all had a big building there
22 in New York City?
23 A. That's right.
24 Q. How many floors in that building did you
25 have?
0100
1 A. There were 50 floors.
2 Q. How many of them were Union Carbide's?
3 A. I don't remember. We had a few tenants, but
4 I don't remember.
5 Q. Basically the whole building?
6 A. Not basically. I think there were maybe six
7 floors that were tenant floors.
8 Q. So you all would have had about 40 floors of
9 the 50?
10 A. That's correct.
11 Q. All right. I'm just trying to get a feel for
12 how much of that building was yours.
13 Now, sir, look at that letter. Keep it in
14 front of you for a minute. By that letter I mean
15 Exhibit 13. You told this Dr. Stern fellow on the 38th
16 Floor, the termination with Degussa is not going
17 smoothly and that they're making very irresponsible
18 statements to customers concerning the toxicology of
19 asbestos.
20 You've got both of their letters in front of
21 you. What statement did you consider irresponsible?
22 A. This, you know, unfortunately it has been
23 found that A-28 is noxious and probably subject to
24 cancer; subsequently our company decided to stop selling

25 this product.

0101

1 Well, I would suggest to you that we
2 disagreed very strongly with that statement, and by this
3 time, you know, we were aware -- Degussa produced the --
4 before they signed the distribution agreement with us,
5 they produced fume silica, and they were selling it as a
6 thixotrope in competition with us.

7 They obviously recognized at an early date
8 that we had a superior product, and so they discontinued
9 the marketing of their own fume silica.

10 At some point in time they ran into the same
11 resistance from purchasing agents that we were running
12 into in the United States, and they said, hey, you know,
13 we can put out a document like this, terminate the
14 agreement with Union Carbide, and as you can see here,
15 he quickly points out, some quantities will be
16 available, however, before the end of the year. In
17 order to continue your manufacturing, we will be
18 grateful if you could let us have your order
19 immediately. A-28 will be replaced by our aerosol, COK
20 Aerosol 300.

21 Now, basically all Degussa saw, in our
22 estimation was an opportunity to play on the media
23 frenzy to say things that weren't -- you know, that -- I
24 don't know that they were that specific in the -- in the
25 media, but at least they were -- the media was

0102

1 suggesting that, you know, that the hazard was greater
2 than certainly it was believed by people and regulatory
3 auditors in the US and for that matter in Europe and --
4 but, you know, they were being said, so they play on
5 that.

6 They -- you know I don't know what you get
7 out of this statement, that noxious and probably subject
8 to cancer. I mean, you know, I don't think anybody
9 would ever, you know, disagree with the fact that
10 asbestos used improperly was a carcinogenic thing, but
11 this noxious and sickening thing, you know, is something
12 that they just picked out of the blue.

13 But our feeling, my feeling, still is
14 strongly to this day that these guys were just taking
15 advantage of the fact that it was difficult to sell an
16 RG grade, which they call it the A-28, and to put their,
17 you know, inferior product back on the market. It was
18 that simple.

19 Q. Well, sir, I'm looking at it and in plain
20 English it looks to me like they said that the asbestos
21 product is probably subject to cancer, which means it
22 could probably cause cancer.

23 A. Well, you --

24 Q. You call that an irresponsible statement?

25 A. No, no. You -- both you and I know that --

0103

1 that asbestos is a carcinogen, and the question is, can
2 it be used safely within certain limits. And I'm saying
3 that we were convinced then, we're convinced now, that
4 that's the case, that it could be used safely.

5 And all I'm saying is we had evidence to
6 doubt the bona fideness of what this organization said.
7 After all, you know, this is a -- this is an
8 organization that sold thiolovit to people for years,
9 and, you know, they -- they're -- you know, you might
10 argue that that might make them more sensitive to this
11 sort of thing, but I think it's just crass, commercial,
12 opportunistic action on their part.

13 Q. All right. Mr. Rawlings, I want to see if I
14 understand your answer. We're talking about sale of
15 RG-244?

16 A. Right.

17 Q. That is a Calidria asbestos Union Carbide
18 sold?

19 A. Yes.

20 Q. They mined it out of Idria, California?

21 A. That's correct.

22 Q. It was a chrysotile asbestos, short fiber?

23 A. That's right.

24 Q. You will agree with me it was a -- it was or
25 is carcinogenic, it causes cancer, you just disagree

0104

1 over how much dose it takes to do it; fair to say?

2 A. That's absolutely right.

3 Q. And that's cancer of the lung, mesothelioma,
4 those are what we're talking about, right?

5 A. That's correct.

6 Q. That Union Carbide has known that based on
7 all of your science way back in the '70s, probably
8 before, but you all's position is it can be used
9 responsibly and it doesn't cause that cancer except at
10 excessive levels, fair?

11 A. That's -- that's correct. That's always been

12 our position.
13 Q. So the reason you consider this letter
14 irresponsible from Degussa, and by this letter I mean
15 Exhibit 11, is because it says probably subject to
16 cancer, but it doesn't say what the dosage needs to be,
17 and you think it was just a manipulative letter to get
18 Degussa's product sold instead?
19 A. I believe that firmly.
20 (Rawlings Exhibits No. 14 & 15 were marked
21 for identification.)
22 BY MR. LANIER:
23 Q. And is that then the reason you wrote the
24 letter that's dated actually January the 6th, which is
25 Exhibit 14? Let me give it to you to look at, and I say
0105
1 you wrote it. As I'm looking at it, I've seen some
2 other things that indicate to me it came from you,
3 but -- but I don't see your name signed on it so it may
4 not have been.
5 Help me with that first. Who wrote this?
6 A. (No response.)
7 Q. This may be a draft that you didn't send.
8 I'm not sure.
9 A. Well, I was familiar with this letter, I
10 mean, you know.
11 Q. Well, let me tell you why I know you were
12 familiar with it. Let me get it all out here so that we
13 don't have to play guessing games at all, because that's
14 not good use of time or fair to you.
15 Here is a responsive letter from Degussa to
16 you saying that they got your January 11th letter with
17 the enclosed January 6th letter here that's Exhibit 14.
18 Do you see that?
19 A. Yes.
20 Q. Okay. Now, then let's look at that Exhibit
21 Number 14, the January 6th letter that you sent to
22 Degussa. You said, according to you -- and I'm looking
23 at the second product -- or second paragraph. According
24 to you, Degussa, this product, in effect, should have
25 been declared harmful and even carcinogenic, and you
0106
1 would be obliged to halt the sale thereof. Did I read
2 that right?
3 A. That's correct.
4 Q. Well, sir, it was carcinogenic, wasn't it?
5 A. Well, it was carcinogenic depending on how it
6 was used.
7 Q. Well, now, you told me that there's no way
8 anybody could have made representations like were in the
9 Castor Oil letter that your product was
10 non-carcinogenic.
11 Sir, you sent a letter out threatening to sue
12 people for claiming it was carcinogenic, weren't you?
13 A. Yes, I -- I did, but -- yes, I did.
14 Q. You said that that's a contradiction to the
15 rules of good faith and are of a nature to create false
16 impressions, can't tolerate them, and we're going to --
17 we're going to file legal actions.
18 You told them it was not carcinogenic with a
19 letter like that, didn't you?
20 A. No. You've -- you've taken the thing all
21 completely out of context.
22 Q. Sir, look at the words. You said
23 specifically, according to you, this product should have
24 been declared harmful and even carcinogenic?
25 A. No, but basically they are telling me what my
0107
1 letter said, and I can't believe that I said in my
2 letter that the product was not carcinogenic. I mean,
3 it's just out of hand.
4 Q. Sir, you sent them this Exhibit Number 14
5 letter where you're threatening to sue them because
6 they're telling people it is carcinogenic, and you're
7 saying if you're going to tell them it's carcinogenic,
8 we're going to sue you?
9 A. That's what they said I said.
10 Q. No. This is -- this Exhibit 14, sir, this is
11 your letter. This is your letter you sent to them
12 saying, according to you, Degussa, this product should
13 have been declared harmful and even carcinogenic, and
14 you, Degussa, would be obliged to halt the sale, and you
15 said this is false?
16 A. Well, first of all, you're sitting here and
17 you're not getting the whole picture. I mean, certainly
18 we never took the position with anybody that asbestos
19 wasn't carcinogenic, including RG-244, but we believed
20 that a company who was then furnished with all of the
21 information that we had and our toxicology report, where
22 special care had been taken to -- to bring them up to
23 date on, you know, our view on its usage and strong
24 binders that it could be used, the educated force of

25 using it in a way that it was not a risk of -- a
0108
1 carcinogenic risk, these guys just ignored that and
2 decided that they would use this particular media frenzy
3 to sell their product and -- and get rid of ours.
4 There's no question in my mind about that.
5 And if things got a tear in temperate I'm --
6 you know, I'm not surprised, but certainly I wasn't
7 making a position, making a posture with them that
8 RG-244 was not asbestos and that asbestos was not a
9 carcinogen. It's ridiculous, I mean, you know, to think
10 that way.
11 Q. Well, sir, that's what the letter says, isn't
12 it?
13 A. Well --
14 Q. I mean, it says what it says, doesn't it?
15 You're threatening to sue them because they're telling
16 people that it causes cancer, it's carcinogenic, and
17 you're saying we're going to sue you if you tell that to
18 people?
19 A. Yes, well, it's -- it's an irresponsible
20 statement. It's like saying, you know, it's
21 carcinogenic under any condition. You know, that's the
22 inference that they -- that they were trying to give to
23 people, and that simply isn't true.
24 (Rawlings Exhibits No. 16 was marked for
25 identification.)
0109
1 BY MR. LANIER:
2 Q. Well, sir, I'm going to show you now
3 Plaintiff's Exhibit Number 16, which is the response
4 that Degussa sent to you after they got your letter
5 threatening to sue them. Do you have that in front of
6 you?
7 MS. PRINZ: Was that 15?
8 MR. LANIER: Did we skip 15?
9 THE WITNESS: Well, 15 that I was looking at
10 is a Degussa letter that I had before.
11 BY MR. LANIER:
12 Q. All right. I think this is 16 then that I'm
13 giving you now.
14 A. Okay. Now, they refer to my letter of
15 January the 11th.
16 Q. Which we don't have. It looks like it was
17 just --
18 A. And I was going to say and they characterize
19 what I said in that letter, and I -- I don't accept
20 their characterization to begin with.
21 Q. Well, I think what they actually do is say
22 that your letter of January 11th enclosed this Exhibit
23 Number 14 --
24 A. Yes.
25 Q. -- and so they -- they mention, if you look
0110
1 there, that you had sent them the Exhibit 14, the
2 January 6th letter. Do you see that?
3 A. This is the -- the copy of the unsigned
4 letter --
5 Q. Right.
6 A. -- to Degussa.
7 Q. Right. And all I'm -- all I'm saying to you
8 right now, if you look at it, sir, you'll see that this
9 letter right here, Mr. Rawlings, we refer to your letter
10 of January 11th and the letter of Union Carbide Europe
11 to our subsidiary company dated January 6th. In other
12 words, you enclosed or they were looking at the January
13 6th letter --
14 A. Yes.
15 Q. -- as well as your own. Do you see that?
16 A. Okay. But, you know, I --
17 Q. Well, sir --
18 A. There is no way in the world that we were
19 contending outside a very testy little thing where they
20 were being ingenious with us --
21 Q. But, Mr. Rawlings, if you look at the letter
22 that they sent you there in January, this Exhibit Number
23 16 -- 15 --
24 A. Right, where they said you said in your
25 letter of January 11th.
0111
1 Q. Right. If you look down at the bottom and on
2 the next page, they specifically tell you, hey, we'll
3 give you the names and addresses of all of the people
4 who had been buying your stuff so that you all can
5 continue to sell it to them. They say that, don't they?
6 A. The only thing they could do that would be
7 really meaningful after the damage they had done would
8 be to recommence selling our product.
9 Q. Sir, the only damage that was done was them
10 putting out a form letter to everybody that says, we
11 think that causes cancer or the studies show -- look at

12 the actual form letter. It says, Dear Sirs, you've been
13 a regular customer of ours for some time and have
14 come -- have no doubt come to appreciate the advantages
15 of our asbestos fillers. Although these products have
16 much to offer technically, we've decided to withdraw
17 them from the market between now and the end of the
18 year.

19 A. And I think -- I think it's interesting that
20 they later on say, but we still have some stocks and
21 we'd be happy to supply you with them until they're
22 exhausted, but right after that --

23 Q. Well, I'm not sure that's shining behavior on
24 their part, but --

25 A. Yes, well --

0112

1 Q. -- sir, they did put the letter together and
2 they said, we're doing so mainly because of our
3 misgivings regarding the possible health effects.

4 A. All I can tell you is that as far as Degussa
5 was concerned, this was an act of ultimate bad faith on
6 their part.

7 (Rawlings Exhibit No. 17 was marked for
8 identification.)

9 BY MR. LANIER:

10 Q. I'm not sure what all of these numbers of
11 documents are right now, but I'm going to give you one
12 that's document Number 17. It is the Degussa letter
13 dated December 7th that they sent out to all of their
14 suppliers before you started writing them. I'm sorry,
15 sir.

16 Would you tell me -- I will give you Marks A
17 Lot, and would you please highlight for me the language
18 that you think was irresponsible and wrong there? There
19 you go.

20 A. (Witness complies.)

21 Q. Okay. With this green marker, sir, on
22 Exhibit Number 17 you have highlighted what you consider
23 to be irresponsible -- what was your language --
24 irresponsible statements to customers, right?

25 A. Yes.

0113

1 Q. And what you considered irresponsible was
2 the, only more recently has statistical evidence begun
3 to build up from which it appears asbestos dust cannot
4 be ruled out as a possible cause of lung and peritoneal
5 cancer even when these regulations are observed.

6 You felt that was irresponsible and wrong?

7 A. Yes.

8 Q. Anything else in here?

9 A. Not really.

10 MR. LANIER: Okay. Degussa is over, if you
11 want to take a lunch break. Thank you,
12 Mr. Rawlings.

13 THE VIDEOGRAPHER: Off the record. The time
14 is now 12:58.

15 (Recess taken from 12:58 p.m. to 1:45 p.m.)

16 THE VIDEOGRAPHER: On the record. The time
17 is now 1:45 p.m. On the record.

18 BY MR. LANIER:

19 Q. Sir, I want to talk some about your frame of
20 mind on asbestos. You remember Mr. Bicks asked you what
21 your frame of mind was as to the unique properties of
22 Union Carbide's asbestos. Do you remember those
23 questions?

24 A. (No response.)

25 Q. First of all, when you did your research and

0114

1 when you did your speaking with the authorities at Union
2 Carbide on Calidria, which one of them told you about
3 the studies that showed Calidria was more toxic and
4 harmful than other kinds of chrysotile?

5 MR. BICKS: Objection to the form.

6 THE WITNESS: Are you objecting to form?

7 MR. BICKS: Yes.

8 THE WITNESS: Okay.

9 A. I was never told that.

10 Q. Really?

11 A. That's correct.

12 (Rawlings Exhibits No. 18 & 19 were marked
13 for identification.)

14 BY MR. LANIER:

15 Q. Did anyone ever give you what I'll mark as
16 Plaintiff's Exhibit 19 and ask you to take a look at,
17 sir? Have you ever seen that document before?

18 A. I think so, but let me check it.

19 Q. All right.

20 A. No, as a matter of fact I have not seen the
21 document.

22 Q. Sir, if you look at it, that document is
23 marked as a confidential report, special report by the
24 Mellon Institute, looking at basically disease potential

25 of three different kinds of asbestos products. It was
0115
1 done under funding by the Union Carbide Corporation,
2 Chemicals Division. Do you see all of that on the front
3 page?
4 A. Yes.
5 Q. This was not under your watch. This was
6 before your watch back in July of 1966, true? I think
7 that's also on the front page.
8 A. Yes.
9 Q. All right. Sir, the summary of this tells us
10 that they took a Johns-Mansville fiber and they took a
11 second fiber, I believe it was a Canadian fiber, and
12 then they took a fiber that was the Calidria, a Union
13 Carbide fiber, and tested those three, and of those
14 three chrysotiles, they didn't all have the same
15 reaction.
16 The Union Carbide chrysotile produced more
17 severe reactions in both the rats and the guinea pigs.
18 Did you see that, sir?
19 A. Yes, I see that's what it says all right.
20 Q. And no one ever let you know that your
21 asbestos at Union Carbide tested out to be more toxic
22 and dangerous than the other kinds of chrysotile, did
23 they?
24 A. No, but I think that, you know, in fact, the
25 information I had was all to the contrary.
0116
1 Q. And the tests, the hardcore tests, they never
2 showed you, they being your company, true?
3 A. I'm not, you know, sufficiently knowledgeable
4 to judge this test. You know, I'm not sure about the
5 science involved here.
6 Q. Okay. Well --
7 A. You know, I -- I can't really look at this
8 and say to you that granulomas with cells in six of the
9 seven guinea pigs, what the hell that means.
10 Q. Well --
11 A. I mean, I just simply don't know.
12 Q. And I won't press you on the details of that,
13 but you've spent an hour and a half testifying before I
14 started about what all you'd been told and how much you
15 were able to go research and how much you knew and that
16 this was under your watch, and I'm just curious -- I'm
17 not asking for those fine details, but just the general
18 comments that it looks like the reaction was more severe
19 with the Union Carbide asbestos as opposed to the other
20 kinds.
21 You understand what that means, a more or a
22 less severe reaction, don't you?
23 A. I don't understand when they describe the
24 reaction what -- what exactly they're describing.
25 Q. Well, do you understand that the reaction is
0117
1 not a good thing?
2 A. That's the implication, but I don't know
3 that.
4 Q. Well, I'll represent to you the reaction is
5 disease. Now, if I'm right, no one ever told you that
6 confidential Union Carbide tests done at the Mellon
7 Institute showed that the Union Carbide asbestos was
8 more toxic, more dangerous, than the other kinds of
9 chrysotile?
10 A. As I say, my -- my information is all to the
11 contrary.
12 (Rawlings Exhibit No. 20 was marked for
13 identification.)
14 BY MR. LANIER:
15 Q. All right. Let me show you another document
16 to that effect. It's Exhibit Number 20. For the record
17 this is a retyped version so it's easier to read on the
18 first two pages. The last two pages are the actual
19 signed original copy. You just wouldn't find the last
20 two pages as easy to read. Okay.
21 Have you got all four pages?
22 A. Yes.
23 Q. Okay. Sir, this is a letter from a
24 Dr. Dernehl.
25 You knew Dr. Dernehl, didn't you?
0118
1 A. Yes.
2 Q. He was the medical -- associate medical
3 director at Union Carbide, right?
4 A. That's correct.
5 Q. And he wrote this, he being Dr. Dernehl,
6 wrote this letter to Dr. Hall.
7 Did you know Dr. Hall?
8 A. Yes.
9 Q. And in this letter -- by the way, have you
10 ever seen this letter before? It's 1967. It's before
11 your watch.

12 A. I don't remember this specific letter.
13 Q. In the second paragraph Dr. Dernehl says we,
14 meaning Union Carbide I gather, have been interested in
15 the possibility that the short fiber Coalinga
16 product -- now, that is your Calidria chrysotile, isn't
17 it?
18 A. Yes.
19 Q. Might have a greater hazard than the more
20 conventional forms of asbestos because sub-micron silica
21 has been known to cause a rapidly progressive silicosis
22 after exceedingly brief exposure -- in other words,
23 extra small silica is bad -- so we were concerned about
24 whether the Coalinga material which -- with its
25 exceeding fine fibril diameter might have a similar
0119
1 effect in causation of asbestosis.
2 We therefore made some preliminary studies in
3 which the material was injected into the belly cavity of
4 guinea pigs, rats and rabbits and also was injected
5 intratracheally by a method which distributes the
6 asbestos throughout the lungs of rats.
7 The materials injected were the standard
8 fiber, a refined fiber and a long fiber obtained from
9 Johns-Mansville for purpose of comparison. In the
10 injection study the Coalinga refined fiber -- now, that
11 would be Union Carbide's chrysotile called Calidria,
12 right?
13 A. Yes.
14 Q. Produced the most severe reaction in the
15 belly, whereas the standard fiber and the Mansville
16 fiber were essentially the same and less severe. In the
17 injection study in the lung, the crude fibers caused a
18 more severe, the refined fiber was intermediate and the
19 Johns-Mansville fiber was least reactive. Did I read
20 that right so far?
21 A. I'm having trouble reading it. I'm listening
22 to you, but I --
23 Q. Well, what I want you to focus on now is this
24 last sentence that says, the only conclusion. Do you
25 see that sentence, last sentence in the paragraph I've
0120
1 been reading?
2 A. (No response.)
3 Q. Do you see that last sentence in the second
4 paragraph on the page you're on? I believe it would be
5 the paragraph that's starting up at the top. Do you
6 see, the only conclusion? Do you see that sentence?
7 A. (No response.)
8 MR. LANIER: Mr. Bicks, I would not object to
9 you pointing it to him if -- if you want to save me
10 from having to get over his shoulder.
11 BY MR. LANIER:
12 Q. Up at the top --
13 A. Right.
14 Q. -- the only conclusion we can draw --
15 A. Okay.
16 Q. Do you see where that is? The only
17 conclusion we can draw from this crude test is that it's
18 possible our Coalinga product may be more hazardous to
19 use than long fiber asbestos in that it may induce the
20 disease asbestosis at an earlier time after exposure.
21 They never told you that, did they?
22 A. No.
23 Q. They had you over the whole division and they
24 didn't show you the test and they didn't tell you the
25 conclusions. They let you think it was a safe product,
0121
1 didn't they?
2 A. Now you're trying to put words in my mouth.
3 I mean, a safe product is a -- asbestos is a dangerous
4 product. All asbestos is dangerous.
5 Q. I understand, but they let you think --
6 A. You know what we're talking about, and it
7 comes right down to that it can be used safely.
8 Q. Well, or so you were led to believe?
9 A. Yes, and so I believe despite what this says,
10 but --
11 Q. Well, you've got actual studies being done.
12 It's true the results were kept confidential, but the
13 study was done, right? I mean, you've seen the study
14 now. I've shown it to you even if they won't.
15 MR. BICKS: Objection to the form.
16 MR. LANIER: Yes, it's probably out of line.
17 BY MR. LANIER:
18 Q. Let me reask that. Sir, you've got -- I've
19 given you -- they never gave you the study, did they? I
20 had to give it to you, right?
21 A. I don't recall seeing it.
22 Q. They never gave you Dernehl's letter where he
23 talks about the conclusion. They never gave you that,
24 did they? I had to.

25 A. I don't remember ever seeing it.

0122

1 Q. Well, when you tell this jury, we told our
2 customers everything, you never told your customers that
3 your asbestos might be more dangerous, did you?

4 A. No, we never did.

5 Q. You never told your customers that the only
6 conclusion you all could draw from one of the tests you
7 done -- you'd done was that it's possible your product
8 was more hazardous to use than long fiber asbestos. You
9 never told them that, did you?

10 A. There is a tremendous amount of information
11 that we have in our files to the contrary.

12 Q. Well, sir, you don't know what's in all of
13 the files. You didn't have these things in your files,
14 did you?

15 A. I don't think so, no.

16 Q. Why -- why would they hide this from you? Do
17 you have a reason?

18 MR. BICKS: Objection to the form.

19 A. I don't know that it was necessarily hidden
20 from me, but I never did see it.

21 Q. Well, sir, they told you that as long as you
22 kept breathing asbestos at above the threshold limit
23 value -- I mean, sorry, below the threshold limit value,
24 you didn't have to worry about disease. That's what
25 they told you, didn't they?

0123

1 A. Well, no. That was, you know, after the
2 information on mesothelioma became -- coming -- you
3 know, started coming in, all of our toxicology reports
4 said that our recommendation was that they wear
5 respirators during the interjection of our material into
6 the resin because it was not entirely clear to us just
7 what was going on here, and, you know, I can show you
8 reams of toxicology reports that say that.

9 Q. Well, sir, Dr. Dernehl talks about that in
10 the next paragraph in this letter you've never seen.
11 It's the other document to your right -- yes, to your
12 right, sir, not that one but the one next to you, right
13 there, yes, sir.

14 If you look at the -- on the second page of
15 the document, either the retyped letter or the original,
16 the first full paragraph that starts on that page that
17 says, the question was raised, do you see that -- yes,
18 where your finger is?

19 A. Yes.

20 Q. The question was raised whether the 5 million
21 particles per cubic foot were still valid as a threshold
22 limit value.

23 A. Okay.

24 Q. The doctor says, I maintained the value is
25 still correct in terms of preventing the disease

0124

1 asbestosis. There is no evidence of asbestosis
2 occurring among people who have worked in an environment
3 where the concentration was kept within it.

4 But he continues, it is probable the 5
5 million particles per cubic foot will not be acceptable
6 for the prevention of mesothelioma. I have no idea what
7 concentration might be effective in preventing this
8 disease. I would wonder whether even a limit of 1
9 million particles per cubic foot would be effective.

10 A. Now, my whole situation -- I didn't deal in
11 cubic feet. I dealt in cc per centimeter, and as I
12 recall, the 5 million particle threshold value was
13 something like 30 cc.

14 You know, he's questioning whether 30 cc
15 or -- or the 5 million particles per cubic foot is
16 acceptable, and I'm saying that, well, you know, I -- I
17 wouldn't contest that. That was, you know, a very high
18 level, and on my watch, the only disagreement we had was
19 as to whether five fibers per centimeter, which is
20 something like six times less than what he's citing
21 here, the threshold limit value that gives, you know,
22 sort of a reasonable -- gives you a reasonable assurance
23 rather than the minimal risk applies.

24 And as you will recall from the, you know,
25 findings of -- of the OSHA, this is exactly what they

0125

1 said, that we think it reduces it to a reasonable risk.
2 It doesn't guarantee because of questions of
3 predisposition and other things that it would always be
4 there, but they say it reduces it to a reasonable risk.

5 I personally have no experience with -- with
6 threshold values that are as high as what Dr. Dernehl is
7 talking about here, so --

8 Q. Well, let's pause for a minute and talk about
9 that.

10 You went to work in the Metals and Mining in
11 '69, didn't you?

12 A. Yes, but I went to work as in -- in an
13 administrative function.
14 Q. Did you --
15 A. It wasn't until '71 that I got involved with
16 asbestos.
17 Q. Did you know in 1971 the toxicology report
18 that was being published by your department under your
19 watch said that this five TLV, in the exact language
20 being talked about here by Dernehl, was accurate?
21 A. No, no, no. You're talking about five fibers
22 per cubic centimeter.
23 Q. Not in '71, sir. That didn't come in until
24 OSHA in '72. Until OSHA in '72 the TLV was 5 million
25 parts per cubic foot, exactly what Dernehl is talking
0126
1 about here. Did you know that?
2 MR. BICKS: Objection to form.
3 A. Well, you know, I know that's what it -- what
4 it was, but I don't -- you know, I don't argue with the
5 fact that there was some question as to whether it was
6 adequate.
7 Q. Sir, I'll show you a copy of the toxicology
8 report that was already in existence when Dr. Dernehl
9 wrote this letter.
10 MR. LANIER: We'll attach it as Exhibit 21.
11 (Rawlings ExhibitS No. 21 & 22 were marked
12 for identification.)
13 BY MR. LANIER:
14 Q. If you look at it here, it's a letter dated
15 March 22nd, 1966. The cover letter goes to a bunch of
16 different people.
17 I'll bet you know some of these people, don't
18 you?
19 A. Yes. They are all over on the other -- the
20 non-metal side of the house, but, you know --
21 Q. And it talks about early in March New York
22 Times and Herald Tribune talked about these new things
23 of asbestos as a health hazard. This is out of context
24 reporting. You have copies of Dr. Dernehl's asbestos
25 toxicology report. Additional copies are enclosed. Use
0127
1 these. Call particular attention to Dernehl's
2 statements in regard to the threshold limit value for
3 asbestos. Do you see that?
4 A. Yes.
5 Q. All right. Now let's look at the attached
6 report. Do you see where it says at the top asbestos
7 toxicology report?
8 A. Yes, I do.
9 Q. Okay. It specifically says, it's now
10 generally accepted a man can work a 40-hour week for a
11 lifetime without developing asbestosis if the asbestos
12 dust particle count is kept at or below 5 million
13 particles per cubic foot of air. This dust
14 concentration is the threshold limit value for asbestos.
15 A. Okay.
16 Q. Do you see that? Do you see where it says
17 it, sir?
18 A. Yes, and that's the equivalent of 30.
19 Q. That's right.
20 A. Okay.
21 Q. That's right. And if you continue, you're
22 not going to find anything in that asbestos toxicology
23 report that even remotely tells the Kelly-Moores of the
24 world what Dr. Dernehl knew, namely that's not going to
25 prevent mesothelioma. It's nowhere in there, is it?
0128
1 A. Well, I don't think that, you know, the
2 mesothelioma thing was necessarily all that clear. I
3 mean, it -- basically there were some suggestions made
4 that high dosages but lower cumulative exposures would
5 be a causative factor, but, you know, that's --
6 Q. Sir, you told us specifically, quote, that
7 you all would communicate whatever Carbide knew on a
8 subject?
9 A. Well, during my watch that was certainly
10 true.
11 Q. Well, it evidently wasn't true before your
12 watch, was it?
13 MR. BICKS: Objection to the form.
14 BY MR. LANIER:
15 Q. It wasn't true before your watch based on
16 that, was it?
17 MR. BICKS: Objection to the form.
18 A. All I can say is that these documents would
19 lead you to that conclusion.
20 Q. Go back to Rawlings Exhibit Number 4. This
21 is one that the Carbide lawyer asked you about.
22 You've said that's a brochure we gave
23 everybody to tell them about our Calidria asbestos,
24 right?

25 A. Yes.

0129

1 Q. And you talked about how you probably lost
2 customers because it spent so much time talking about
3 toxicology properties. Do you remember that?

4 A. That's right.

5 Q. Look what it says, sir. It says, it's now
6 generally accepted a man can work a 40-hour week for a
7 lifetime if the dust particle count is kept at or
8 below -- what does it say?

9 A. Five million particles per cubic feet of air.

10 Q. That's that same TLV that you said wasn't
11 adequate, right?

12 A. (No response.)

13 Q. It's the same TLV that wasn't adequate, isn't
14 it?

15 MR. BICKS: Objection to the form.

16 A. I'm looking for a date on this.

17 Q. October 1968, down on page one on the lower
18 right-hand corner. It's possible that the sticker has
19 covered it up, but I don't think it has.

20 A. I don't know.

21 Q. Do you see it there?

22 A. Yes, I do.

23 Q. Sir, October of 1968, that's after
24 Dr. Dernehl's letter that's in front of you that says
25 that the 5 million is not safe, isn't it?

0130

1 A. That's what it appears to say.

2 Q. So it appears that this letter you've
3 testified was going out to Kelly-Moore and others to
4 warn them about asbestos hazards did not tell the truth
5 about the Union Carbide knowledge, right?

6 A. I suppose that that's the indication you see
7 here.

8 Q. And, of course, this was before your watch,
9 wasn't it?

10 A. Yes, it was.

11 Q. If you pick back up that Calidria sales
12 brochure you all were putting out to Kelly-Moore and
13 others, I want to draw your attention -- it's Exhibit
14 Number 4 -- I want to draw your attention, if you would
15 turn to page four, let's read what it says about cancer.

16 If you'll look at the paragraph, that
17 first -- the first full paragraph on page four where it
18 starts, several years ago, do you see that?

19 A. Yes.

20 Q. This is the only paragraph that talks about
21 cancer as a -- as a hazard with asbestos, and I'd like
22 to go through it with you very carefully.

23 You all were telling Kelly-Moore several
24 years ago it was reported that there was an increase in
25 the incidence of cancerous tumors especially of the lung

0131

1 associated with asbestosis. Do you see that?

2 A. Yes.

3 Q. Recently there have been reports of some
4 cancers occurring in individuals exposed to asbestos
5 dust but who have not developed clinical asbestosis. Do
6 you see that?

7 A. Yes.

8 Q. It continues, it is believed by most
9 authorities that these cases have been associated with
10 exposures significantly exceeding the threshold limit
11 value. Did I read that right?

12 A. That's correct.

13 Q. And this is that threshold limit value of 5
14 million particles per cubic foot before your watch,
15 right?

16 A. Right.

17 Q. It says, a major manufacturer of asbestos
18 products who also mines asbestos has not been able to
19 show an increase in cancerous growths in men working
20 where dust concentrations were maintained at the
21 threshold limit value. Do you see that?

22 A. Yes.

23 Q. Sir, this is suggesting to the Kelly-Moores
24 of the world that as long as you keep your exposure
25 below the threshold limit value of five, you're safe

0132

1 when it comes to cancer, right?

2 A. That was certainly the law of the land at
3 that point in time.

4 Q. Sir, that is the representation made by Union
5 Carbide to Kelly-Moore and others that in tape joint
6 compound materials, if you keep the exposures below the
7 threshold limit value, you are safe on cancer, right?

8 A. (No response.)

9 Q. I mean, that's what it says, isn't it?

10 A. That's what it says, yes.

11 MR. BICKS: Mr. Lanier, in terms of

12 housekeeping --
13 MR. LANIER: Just one second, please. I'm in
14 the middle of something. Just one second.
15 BY MR. LANIER:
16 Q. Sir --
17 MR. BICKS: Let me just -- then you can keep
18 going.
19 MR. LANIER: No.
20 MR. BICKS: You were supposed to go for an
21 hour and a half. Just give me a sense -- the rules
22 of the Court --
23 MR. LANIER: The reason I let you -- okay.
24 Can we do this when I'm not in the middle of this
25 line of questioning on this document right now,
0133
1 please?
2 I will finish this line of questioning in
3 three to five minutes, and then you can talk to me
4 all you want, but this is very rude and out of line
5 with the rules. Sir --
6 MR. BICKS: Hold on a second. The rules were
7 that we were to go an hour and a half.
8 MR. LANIER: The rules were that I would go
9 first for an hour and a half and then you would go
10 an hour and a half and then I would go an hour and a
11 half and then you would go an hour and a half.
12 I said instead you could go until you were
13 done and I would just recross, I would let you take
14 the deposition first, which you did.
15 MR. BICKS: But you've gone significantly
16 over an hour and a half now.
17 MR. LANIER: That's because I'm doing my
18 cross off your direct.
19 MR. BICKS: You -- you were allowed to go for
20 an hour and a half --
21 MR. LANIER: No.
22 MR. BICKS: -- so let's finish this up.
23 MR. LANIER: No, Peter. We'll get the judge
24 on the phone and we'll explain to the judge what
25 we've done, but I let you ask everything. You
0134
1 didn't run out of stuff. You said you were through.
2 I let you ask all of your questions. Didn't you --
3 MR. BICKS: The rules were very clear,
4 Mr. Lanier. You were to go first --
5 MR. LANIER: No.
6 MR. BICKS: -- for an hour and a half. I was
7 to go second.
8 MR. LANIER: Peter, if you want to get the
9 judge on the phone, that's fine, but I'm going to
10 play this for the judge also with my request that
11 you not interrupt these questions. This is on tape,
12 and what you're doing is out of line and not
13 appreciated and it's very clear gamesmanship.
14 MR. BICKS: No, it is not.
15 MR. LANIER: And I think you will find
16 this -- there is no reason for you to be
17 interrupting at this moment when I have asked you
18 not to, and I will be asking the Court to consider
19 rejection of the pro hac vice.
20 MR. BICKS: Can I just, for the videographer,
21 can you tell me how long he's been questioning?
22 THE VIDEOGRAPHER: One hour and 40 minutes.
23 BY MR. LANIER:
24 Q. Sir, before the Union Carbide lawyer
25 interrupted, you had just testified that basically
0135
1 comparing what Dr. Dernehl knew with what Kelly-Moore
2 was told as to the cancer hazard, there was a
3 misrepresentation, true?
4 MR. BICKS: Objection to the form.
5 A. Again, I'm not sure I know enough about what
6 was going on at this particular point in time to answer
7 that question, but --
8 Q. Based upon the documents that you've been
9 given and that you've testified about, it's true, isn't
10 it?
11 MR. BICKS: Objection to the form.
12 BY MR. LANIER:
13 Q. It's there in black and white?
14 A. What document did I testify about? I talked
15 about -- I testified about a toxicology report during my
16 watch that had a far different reading than this.
17 Q. Sir, the Exhibit Number 4 in front of you you
18 testified about, and I'll show the jury right now your
19 testimony about that, but Mr. Bicks asked you and said
20 it goes on for half of the report, talks about
21 toxicology and you all talked about how that probably
22 cost you sales but you all wanted to tell everybody
23 everything.
24 A. This isn't the same.

25 MR. BICKS: Let's take a break because --
0136
1 MR. LANIER: No.
2 MR. BICKS: Just answer the question and
3 we're going to take a break because you're not
4 showing him the right -- the documents that I showed
5 him.
6 A. No, this is not the document.
7 Q. Is that Exhibit Number 4? Does it have a
8 sticker on it?
9 A. It's UCC 26.
10 Q. It doesn't have Exhibit Number 4 on it?
11 MR. LANIER: No, we're not going off the
12 record with this if you're accusing me of showing
13 him the wrong document.
14 BY MR. LANIER:
15 Q. Look at this. What does that say?
16 A. Exhibit 4.
17 Q. Rawlings Exhibit Number 4?
18 A. Yes.
19 MR. LANIER: Now, Mr. Bicks, why is that not
20 the right document? Is that Exhibit Number 4 or
21 not? Do you withdraw your accusation that I've
22 shown him the wrong document?
23 MR. BICKS: You are showing him a 1968
24 document when you know that document got amended in
25 1969, and I was talking to him about all of the
0137
1 documents --
2 MR. LANIER: Sir --
3 MR. BICKS: -- including the 1969 document
4 and you're trying to confuse him.
5 MR. LANIER: Sir, excuse me. Is this Exhibit
6 4 or not? Is this the document, Peter Bicks, you
7 handed him, you put into evidence or not? Are you
8 saying I have deliberately changed the document and
9 the sticker? Let's go on the record now and say it.
10 MR. BICKS: I'm not saying that, Mr. Lanier.
11 MR. LANIER: Okay. Are you saying that there
12 has been some shenanigans in the room and the
13 documents have been shifted?
14 MR. BICKS: No, of course I'm not.
15 MR. LANIER: Are you agreeing that this is
16 the document you handed him?
17 MR. BICKS: Yes.
18 MR. LANIER: Okay.
19 MR. BICKS: Let's take a break.
20 MR. LANIER: So I'm not mixing --
21 MR. BICKS: No. Let's --
22 MR. LANIER: -- up the documents?
23 MR. BICKS: Mr. Lanier, let's take a break.
24 MR. LANIER: No. We're going to finish these
25 questions. You are not going to interrupt this
0138
1 questioning.
2 BY MR. LANIER:
3 Q. Sir, isn't it true based upon the document
4 Mr. Bicks gave you that you testified about to this jury
5 was one you all gave to Kelly-Moore, was one that you
6 all relied on and that gave all of the toxicology
7 information, that document does not tell the truth about
8 cancer and asbestos, true?
9 MR. BICKS: Objection to the form.
10 A. You know, I'm so confused by this whole thing
11 that I don't know how to answer that question, to tell
12 you the truth.
13 Q. Well, does Dr. Dernehl say in his letter of
14 1967 that five is not a safe level for cancer?
15 MR. BICKS: Objection to the form.
16 A. I don't know that that was the way he worded
17 it, but --
18 Q. Well, look at it. It's right there in front
19 of you. Does he say -- the question was raised whether
20 five was valid for asbestosis. He says it is, but it is
21 probable 5 million particles per cubic feet will not be
22 acceptable for the prevention of mesothelioma. Is that
23 what he says?
24 A. That's what he says.
25 Q. And yet the very next year the exhibit that
0139
1 Mr. Bicks has given to this jury as Exhibit Number 4
2 specifically says about cancer that as long as you stay
3 within five you're safe, right?
4 MR. BICKS: Objection to the form.
5 A. There could have been intervening information
6 as far as I know. I mean, I can't -- I can tell you
7 that what you say about that, it says what it says.
8 Q. And so what it says is not a fair and
9 accurate representation of what Dernehl said in his
10 letter, true?
11 MR. BICKS: Objection.

12 A. It all depends on whether Dernehl had
13 intervening information or not, I suppose.
14 Q. All right. Let's assume Dernehl had no
15 intervening information. Then we know that Calidria
16 brochure Number 4 is inaccurate and misleading, correct?
17 MR. BICKS: Objection to the form.
18 A. Okay. What am I going to say? If you just
19 read the words the way -- way they are, you don't look
20 at any intervening circumstances, then you can say that
21 that would be the case.
22 Q. Okay.
23 MR. BICKS: Let's take a break.
24 MR. LANIER: Why? The witness does not need
25 a break.

0140

1 MR. BICKS: I have to go to the men's room.
2 MR. LANIER: Okay. We've been going for 30
3 minutes. All right. We'll wait. Hurry and go to
4 the men's room, please.
5 THE VIDEOGRAPHER: Off the record. The time
6 is now 2:20. Off the record.
7 (Recess taken from 2:20 p.m. to 2:34 p.m.)
8 (Continued to Volume II)
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0141

1 IN THE DISTRICT COURT OF BRAZORIA COUNTY, TEXAS.
2 23rd JUDICIAL DISTRICT
3 CASE NO. 19785-BH02
4 KELLY-MOORE PAINT COMPANY, INC.,
5 Plaintiff,
6 vs.
7 DOW CHEMICAL COMPANY, ET AL,
8 Defendants.
9 /

10 VOLUME II

11 VIDEOTAPE
12 DEPOSITION OF: JAMES W. RAWLINGS
13 DATE: December 9, 2003
14 TIME: 10:15 a.m. to 5:41 p.m.
15 LOCATION: 325 South Orange Avenue
16 Orlando, Florida 32801
17 REPORTED BY: REBECCA L. FELLA, Registered
18 Professional Reporter, Notary
19 Public, State of Florida at Large
20
21
22
23
24
25

0142

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0144
1 (Continued from Volume I)
2 THE VIDEOGRAPHER: This is tape three of the
3 deposition of James Rawlings. We're on the record.
4 The time is now 2:34 p.m. On the record.
5 BY MR. LANIER:
6 Q. Okay. Sir, during the 15-minute quick run
7 across the hall to the bathroom for Mr. Bicks, did you
8 discuss anything with him?
9 A. Are you -- is there a question?
10 Q. I'm sorry, sir. Mr. Rawlings, Mr. Bicks took
11 a -- a quick run across the hall for 15 minutes to use
12 the restroom.
13 During that time did you have any discussions
14 with him?
15 A. You know, we talked --
16 MR. BICKS: Hold on a minute. You can't go
17 into what I talked to him about on a break.
18 MR. LANIER: I didn't ask him what you talked
19 about.
20 MR. BICKS: Okay.
21 BY MR. LANIER:
22 Q. I said, did you have any discussions with
23 him?

24 A. Yes.
25 Q. And I'd like to know what you all talked
0145 about.
1 about.
2 MR. LANIER: You can instruct him --
3 MR. BICKS: Instruct him not to answer.
4 MR. LANIER: Okay. So it was about this case
5 at least?
6 MR. BICKS: Instruction not to answer,
7 confidential.
8 MR. LANIER: Is the instruction based upon
9 the fact that it's attorney/client work product?
10 What is the privilege based on?
11 MR. BICKS: Attorney/client privilege.
12 BY MR. LANIER:
13 Q. Okay. Now, sir, I want to move on to a
14 little bit of another subject with you, please.
15 Mr. Bicks asked you whether or not Union
16 Carbide made studies available to customers. Your
17 answer was, we would refer to those studies in the
18 toxicology report. Do you remember that testimony?
19 A. Yes, I do.
20 Q. Okay. Now, some of the studies we've already
21 determined were not even given to you. I'm assuming
22 those were not given to customers as well, true?
23 MR. BICKS: Objection to the form.
24 A. You know, you're asking me to assume
25 something too.
0146
1 Q. Well, I mean, you don't have -- you're not
2 telling the jury that that secret study that showed
3 Calidria to be more hazardous, you're not saying that
4 that was given to customers, are you?
5 MR. BICKS: Objection to the form.
6 A. I haven't any idea whether it was or not.
7 Q. Well, it was never given to you, was it?
8 A. I don't think so.
9 Q. So you weren't giving it to customers, were
10 you?
11 A. No, I wasn't giving anything like that to
12 customers. I didn't have it.
13 Q. Well, sir, what you testified to was very
14 careful, and I want to make sure I understand it.
15 Mr. Bicks asked you about two exhibits here that were
16 marked Exhibit 2 and Exhibit 3, and I want to hand them
17 to you. Do you remember him questioning you about those
18 exhibits?
19 A. (No response.)
20 Q. Do you remember those questions, sir?
21 A. Yes. I need to refresh my memory.
22 Q. Okay. Well, take a moment and look at them.
23 Tell me when you're ready for me to continue. Okay.
24 Are you ready?
25 A. Yes.
0147
1 Q. Do you remember Mr. Bicks asking you
2 questions about those toxicology documents, Exhibits 2
3 and 3?
4 A. Right.
5 Q. I believe Mr. Bicks called them toxicology
6 reports. That's not what those are, correct?
7 MR. BICKS: Objection to the form.
8 A. Well, they're not -- you know, they're not
9 edited up toxicology reports.
10 Q. No.
11 A. It just talks about asbestos toxicology.
12 Q. Yes. Those are summaries, aren't they?
13 A. Yes.
14 Q. Those are not documents that you all gave out
15 to your customers; those are internal summaries that
16 contain some handouts and other materials, right?
17 A. Well, it says by its terms that it's to
18 provide -- provide the Calidria asbestos user and
19 potential user with a reasonable picture of the
20 toxicology situation, so --
21 Q. That's, sir, not of the whole document, is
22 it? Where are you talking about?
23 A. I'm talking about --
24 Q. Paragraph three, the purpose of this short
25 report is to provide the Calidria asbestos user --
0148
1 A. Yes.
2 Q. Some limited information generated by cutting
3 and grinding may be of interest is also included?
4 A. Right.
5 Q. It's talking about not this whole document,
6 but what is actually contained within it, the asbestos
7 and your health brochure, the Calidria asbestos
8 brochure, correct?
9 MR. BICKS: Objection to the form.
10 A. It's not apparent to me that everything

11 that's connected here wasn't involved.
12 Q. Okay. Well, look, for example, at the next
13 page of this. Do you think that you sent out to
14 customers like Kelly-Moore a memo that just says,
15 response to article in Wall Street Journal and then has
16 the response, several reprints from recent newspaper
17 articles, coverage is more objective?
18 I mean, this is obviously an internal
19 itemization. We can tell that from page two, can't we?
20 MR. BICKS: Objection to the form.
21 A. I don't think it necessarily follows that
22 they weren't included.
23 Q. Are -- are you swearing under oath that you
24 all sent this document to Kelly-Moore, Exhibit 2 or 3?
25 A. I would say the purpose was certainly to send
0149
1 it out to all users.
2 Q. Are you swearing under oath that Document 2
3 or 3 were sent to Kelly-Moore?
4 A. Did I personally know that this document was
5 mailed to Kelly-Moore?
6 Q. Or hand delivered or anything else.
7 A. No, I can't testify to that, but I certainly
8 can't testify that it wasn't done either.
9 Q. Well, sir, did you know Mr. Bicks has in his
10 office just literally hundreds and hundreds of boxes of
11 Union Carbide's files? Did you know that?
12 A. It doesn't surprise me.
13 Q. Did you know that Mr. Bicks, among all of
14 those boxes, has certain files that specifically say,
15 here are the materials that we sent to Kelly-Moore and
16 to other companies as well?
17 MR. BICKS: Objection to the form.
18 BY MR. LANIER:
19 Q. Did you know that?
20 A. No, I didn't know that.
21 Q. Mr. Bicks hasn't shown you that document that
22 shows what was sent to Kelly-Moore and when it was sent?
23 MR. BICKS: Objection to the form.
24 A. I don't recall seeing it.
25 Q. Okay. Well, let's talk about some documents
0150
1 that we do have that -- that show us at least what we
2 know for certain was being sent to customers. Okay? Is
3 that fair to do?
4 A. (No response.)
5 Q. You're okay if we talk about some documents
6 we do know were sent to customers?
7 A. Sure.
8 Q. All right. Let's start with Exhibit Number
9 22 and what's talked about within that exhibit. I'd
10 like to discuss it with you. Have you ever seen that
11 exhibit before?
12 A. (No response.)
13 Q. Have you ever seen it before, sir?
14 A. Let me finish reading it.
15 Q. I'm sorry; I don't mean to cut you off.
16 A. Well, I -- you know, I see that I'm copied on
17 it. I assume I saw it, but I don't have any personal
18 recollection of seeing it.
19 Q. Okay. Well, it does have a cc going to you
20 as J.W. Rawlings, doesn't it?
21 A. That's correct.
22 Q. And it is dated November 30th, 1971, which
23 was under your watch, right?
24 A. Yes.
25 Q. This is a call sheet, isn't it?
0151
1 A. It's a what?
2 Q. A call report?
3 A. Yes, that's right.
4 Q. This is a call report on another paint
5 company, Glidden-Durkee out of Cleveland, Ohio, true?
6 A. I think that's right, yes.
7 Q. And the purpose of the call or the meeting
8 with that paint company was to discuss the toxicological
9 aspects of Calidria, right? It's under objective, very
10 first line.
11 A. Yes, that's right.
12 Q. It says -- let's -- let's try and get an idea
13 of what went on at this meeting to discuss the poison or
14 toxicology aspects of you all's Calidria asbestos with
15 the paint company.
16 MR. BICKS: Objection to the form.
17 BY MR. LANIER:
18 Q. Do you see observations?
19 A. (No response.)
20 Q. Do you see where it says observations, sir?
21 A. Yes, I see it.
22 Q. It says, we first met with Mr. Dunn and
23 Mr. Holkesvig at their corporate headquarters in

24 downtown Cleveland. Mr. Dunn opened the meeting by
25 saying that they, Glidden Paint Company, were well aware
0152

1 that much of the hysteria associated with the toxic
2 properties of asbestos promoted by the news media and
3 others was, in fact, nothing more than hysteria. Did I
4 read that right?

5 A. Yes, you read it right.
6 Q. In fact, that's your opinion too, isn't it?
7 There's a bunch of -- what did you call it -- media
8 frenzy over this subject, right?

9 A. That's correct.
10 Q. Okay. The observations continue.
11 Nevertheless, it was their, being Glidden's,
12 responsibility and obligation to both personnel of
13 Glidden-Durkee and their customers to assure themselves
14 on the position of asbestos and the safe handling of the
15 product in their applications. Did I read that right?

16 A. You did.
17 Q. So we can as an observation say this was
18 another paint company that wanted to meet with you all
19 because they wanted to make sure they understood just
20 how dangerous asbestos was and how it could be handled
21 safely.

22 That seems to be the purpose of the meeting,
23 right?

24 MR. BICKS: Objection to the form.
25 A. Well, you know, let that go for a minute.
0153

1 What else?
2 Q. All right. Well, it says, he personally,
3 meaning I guess either Mr. Dunn -- well, yes, it must be
4 Mr. Dunn, he personally wanted to be prepared for any
5 questions that might arise either by their production
6 people or unions, et cetera. Did I read that correctly?

7 A. Yes.
8 Q. Now, sir, let's focus in real closely on this
9 next line, okay? Read with me. With this in mind, he,
10 the Glidden paint company, went on to say that to date
11 the only information that Carbide had furnished him with
12 regard to this subject in print is our asbestos
13 toxicology report and some information concerning
14 methods and equipment for determining dust levels. Did
15 I read that right?

16 A. Yes.
17 Q. Now, the asbestos toxicology report, that was
18 a printed document entitled asbestos toxicology report
19 that Union Carbide had, right?

20 A. Now you've lost me.
21 Q. Well, we --
22 A. Are you saying that this was -- the one we've
23 looked at previously was the only toxicology report we
24 had?

25 Q. No. The one that I showed you previously was
0154

1 the 1966 version and it would get amended, but there was
2 an asbestos toxicology report that the jury has seen
3 that's titled asbestos toxicology report, and that's
4 what was provided to these people at least, right?

5 A. That's apparently true.
6 Q. Okay. Then he continues, the -- the Glidden
7 Paint man said our asbestos toxicology report he found
8 atrocious and rather than answering questions actually
9 posed them. He felt that should such a report fall into
10 the hands of their production people, it would cause
11 considerable concern to say the least.

12 Exemplifying his point, he noted we make
13 reference only to crocidolite and yet neglect to
14 identify our own asbestos which is chrysotile. This
15 obviously, on the basis of the report, would be to our
16 favor. He also felt we should be more specific in our
17 recommendations for safe practice. Did I read that
18 right?

19 A. Yes.
20 Q. Would you agree with me that at least for the
21 Glidden Paint Company in November of 1971 you all were
22 not communicating, quote, whatever Carbide knew on a
23 subject, close quote?

24 MR. BICKS: Objection to the form.
25 A. Well, I don't know all what we were
0155

1 communicating, but it would appear that the asbestos --
2 that they had reservations about the asbestos toxicology
3 report.

4 Q. In fact, you all had evidently only given
5 them that toxicology report, and he thought it was
6 woefully inadequate, didn't he?

7 MR. BICKS: Objection to the form.
8 A. I wish he had stated why.
9 Q. Well, I think he does. One of the reasons is
10 that it references only crocidolite. It doesn't talk

11 about the chrysotile. Do you see that where he says
12 that?
13 A. (No response.)
14 Q. Do you see where it says that, sir?
15 A. Well, I'm lost with reading some of the
16 points. Point this out to me now?
17 Q. Okay. It says he felt that the report was
18 bad because -- an example was, we make -- quote, we make
19 reference only to crocidolite and yet neglect to
20 identify our own asbestos which is chrysotile. Do you
21 see that? On the front page, I'm sorry.
22 A. Okay.
23 Q. Let me show you.
24 A. Okay. Here we are. Yes.
25 Q. Do you see where it says, exemplifying his
0156
1 point, he noted we make reference only to crocidolite
2 and yet neglect to identify our own asbestos which is
3 chrysotile? Do you see that?
4 A. Yes, but where is -- where is the -- the
5 applicable -- I want to look at the applicable --
6 Q. Toxicology report?
7 A. -- toxicology report.
8 MR. LANIER: Do you have one, Mr. Bicks?
9 BY MR. LANIER:
10 Q. Sir, I don't think the Union Carbide lawyers
11 brought one, and I can tell you I have not.
12 MR. BICKS: Mr. Lanier, just so the record is
13 clear, this is your examination. I'm not going to
14 be sitting here answering questions on your
15 examination.
16 MR. LANIER: Okay.
17 MR. BICKS: The witness has asked you.
18 MR. LANIER: Okay. I understand. Thank you,
19 Peter.
20 BY MR. LANIER:
21 Q. Sir, I will tell you this, by the time I play
22 this to the jury, they will have seen the toxicology
23 report and they'll know exactly what this language is
24 and I'll hold it up.
25 And right now, while I play this question to
0157
1 them, do you have any memory about it at all?
2 MR. BICKS: Objection to the form.
3 A. I don't have any remember -- I mean, any
4 memory at all of this particular report, the customer
5 visit report.
6 Q. Boy, it sure doesn't look like you all had
7 given this customer all of the information you all knew,
8 this paint company, does it?
9 MR. BICKS: Objection to the form.
10 A. Well, you know, I don't know what the devil
11 we've given, I mean, not necessarily -- well, I guess
12 they were looking at the toxicology report.
13 Q. Well, you say you don't know what you gave
14 them, but you testified when Mr. Bicks asked you, quote,
15 we communicated whatever Carbide knew on a subject --
16 A. Well, we --
17 Q. -- did you not?
18 A. We -- we gave them the toxicology report, and
19 I want to see what this toxicology report said.
20 Q. All right. If the toxicology report -- well,
21 one thing we know for sure, there was one fellow named a
22 Mr. Canning who worked for Glidden who seemed to be a
23 lot more direct, it's a frontal attack is what it's
24 called, on how forthcoming you all were being with
25 asbestos. That's on page two.
0158
1 A. Yes, I saw that.
2 Q. And the recommended action down at the
3 bottom, it says that you all need to start getting some
4 more information packages together, but one of the first
5 things it says is, I think Mr. Canning bears close
6 attention, let's maintain frequent contact with him.
7 That was the main thrust coming out of that
8 meeting, wasn't it?
9 MR. BICKS: Objection to the form.
10 A. It appears that it was certainly a factor.
11 Q. Okay. Now, by the way, you will agree with
12 me that Union Carbide is an authority on what they sell,
13 right?
14 A. Yes.
15 Q. Union Carbide is an authority when Union
16 Carbide sells asbestos or when Union Carbide sells some
17 other chemical, true?
18 A. That's true.
19 Q. And customers ought to be able to rely upon
20 Union Carbide to be an authority, right?
21 A. I suspect that, you know, if you're saying
22 does Union Carbide have the expertise to issue the
23 toxicology report, I'd agree with that.

24 Q. Right. And -- and it's fair and
25 understandable and you all knew when you issued those
0159 reports that customers like the Glidden Paint Company or
1 Kelly-Moore would rely upon you all telling them the
2 truth, right?
3 A. Well, you know, of course the thing that just
4 absolutely amazes me is the assumption that these people
5 that have been in asbestos for as long as they had were
6 little babes in the woods and didn't understand it.
7 Q. How long had Kelly-Moore been in the asbestos
8 business?
9 A. Well, I don't know. They were using asbestos
10 or they were distributing asbestos back, you know, in
11 the -- prior to 1960, I think.
12 Q. No.
13 A. No?
14 Q. No. Did Mr. Bicks tell you that too?
15 A. Somehow I just got that -- that idea from
16 looking at -- at some summaries of the -- of the
17 activity we'd had with them. Now, didn't you all buy
18 a -- a company that, you know, you assumed their
19 information and they were using asbestos?
20 Q. There was a small, little drywall company
21 called Paco that made joint compound in the late '50s
22 they started, and we bought that as part of the wall
23 preparation, trying to be a one-stop shop, but
24 Kelly-Moore has always been a paint company.
25
0160 It's family owned, didn't have a research
1 department, didn't have an industrial hygiene
2 department. I mean, you're within ten years of
3 Ms. Moore taping -- gluing the labels on the paint cans.
4 It was a family shop. Did you know any of that?
5 MR. BICKS: Objection to the form.
6 A. I'm afraid not. I mean, it's --
7 Q. I mean, could they rely on Union Carbide? Is
8 that reasonable? Were you all trustworthy?
9 A. Well, I still contend we were trustworthy on
10 those -- those reports. I don't -- you know, I'd still
11 like to look at the report to see what Mr. Canning, you
12 know, what -- what he was bridling about.
13 I mean, he specifically states the fact that
14 we were -- that we called it a different kind of
15 asbestos, and I find that hard to believe we'd call it
16 other than chrysotile.
17 Q. Well, here is -- I've got it on computer
18 here, which -- which may not be all that easy to read,
19 but let's look at it, because the jury, I can put it up
20 for the jury so they can see it. This is page two of a
21 1969 asbestos toxicology report.
22 Now, I think what they may be talking about
23 is where it says here, a type of cancer named
24 mesothelioma has been noted to be associated with
25
0161 asbestos exposure in recent years. These tumors, while
1 rather few in number to date, may occur in individuals
2 with histories of only slight exposures as much as 20 to
3 40 years earlier.
4 There is considerable evidence that
5 crocidolite is most frequently associated with
6 mesothelioma.
7 A. Okay.
8 Q. From the data available, it appears that the
9 TLV of five is not low enough to protect against
10 mesothelioma. It's quite possible that two is not
11 either. Research on the problem continues. Do you see
12 that?
13 A. Okay.
14 Q. See, but it doesn't say anything about
15 chrysotile. It just talks about crocidolite there.
16 A. But the -- the inference is clear and it's
17 consistent with the information I have that crocidolite
18 was considerably more toxic than -- than chrysotile.
19 Q. But it doesn't tell you about chrysotile. It
20 doesn't tell you -- it doesn't mention whether
21 chrysotile even -- I think that was their concern, you
22 all sidestepped chrysotile. You don't say anything
23 about it there.
24 MR. BICKS: Objection to the form.
25
0162 A. I -- basically speaking, I -- you know, I
1 don't know whether you -- I mean, what you're reading
2 into this thing, but basically as I look at it, the only
3 conclusion I come to is we said that there were some
4 indications that crocidolite, which is not our product,
5 is more toxic with respect to mesothelioma than other
6 forms of -- of asbestos.
7 Q. Okay. Well, sir --
8 A. Now, if they weren't making that clear, I
9 mean, that, you know, that we weren't talking about that
10

11 we were calling our stuff crocidolite rather than
12 chrysotile, I mean, I -- I think that's -- that's --
13 that's absolutely wrong. I mean --
14 Q. Sir, you said that, quote, we erred on the
15 conservative side of giving extra information.
16 Well, that's not true based on what we're
17 reading from Glidden and all of these other things we're
18 looking at --
19 A. Yes, but --
20 MR. BICKS: Objection to the form.
21 BY MR. LANIER:
22 Q. -- is it?
23 A. You know, I -- like -- like with this thing,
24 I'm -- I'm missing information when -- when you're
25 asking me questions and, you know, when I look at it
0163
1 it's clear that they were saying -- suggesting that
2 crocidolite was -- was more toxic than chrysotile is the
3 sole meaning of that thing.
4 Now, you know, if -- if you look at -- and
5 then the other thing is, I'd like to look at the whole
6 of the toxicology report.
7 Q. Okay. Well, you'll have a chance to do that
8 at a break if you'd like.
9 Sir, I want to shift a little bit of gears in
10 terms of the document, and I want to focus in more on
11 your testimony that said, we were willing to lose sales
12 as long as we could give all of the information. The
13 information was more important than the number -- than
14 the amount of sales? Do you remember testifying about
15 that?
16 A. Yes, I remember testifying to that.
17 Q. Sir, I want to show you a document that I've
18 labeled Exhibit Number 18. It's dated May 30, 1975, ask
19 you if you've ever seen it before.
20 A. I have no recollection just looking at the
21 title, but let me read it.
22 Q. And it's a long document. The part I'd like
23 you to especially read initially is going to be the
24 first two paragraphs. I'll -- I'll represent to you
25 this was written by Mr. Rhodes, Harrison Rhodes.
0164
1 MR. BICKS: Mr. Lanier, just for the record,
2 you know it's our position this is a privileged
3 document.
4 MR. LANIER: Yes.
5 MR. BICKS: I'm going to go ahead and let you
6 ask questions provided you won't say that my
7 allowing you to ask questions waives the
8 attorney/client privilege. Is that fair?
9 MR. LANIER: So stipulated.
10 MR. BICKS: That way because if the judge
11 sustains it --
12 MR. LANIER: So stipulated.
13 MR. BICKS: -- you can't use it. If he says
14 you can use it, then --
15 MR. LANIER: Then we're done.
16 MR. BICKS: But we're in agreement that by my
17 letting you ask him questions, it's not a waiver of
18 the attorney/client privilege?
19 MR. LANIER: We are in agreement on that.
20 BY MR. LANIER:
21 Q. I'll tell you, sir, in the interest of time,
22 at this point, having spent three or four minutes
23 looking at it, does it ring any bells?
24 A. Well, there are certain points raised in here
25 that ring a bell with me. I mean --
0165
1 Q. All right. Can I ask you the parts I'm
2 concerned about and you tell me if you have any memory
3 of them, please?
4 A. Okay. The first two paragraphs?
5 Q. Yes, sir. Let's start with who Marjorie
6 Chamberlain was. Did you know her?
7 A. Her name doesn't ring a bell at all.
8 Q. Okay. Mr. Thurber, who received this letter,
9 did you know him?
10 A. Yes, I did.
11 Q. Who was he?
12 A. He was the product manager for asbestos,
13 reported to me directly.
14 Q. So he was under you?
15 A. Yes.
16 Q. All right. This is on your watch now, May
17 30th of 1975, isn't it?
18 A. Yes.
19 Q. It says this -- Mr. Rhodes wrote, this is in
20 response to Thurber's request for comments on Marjorie
21 Chamberlain's memo of May 5 on the subject of, I guess,
22 asbestos use warnings; is that right?
23 A. That appears to be right. That is the

24 caption up above.

25 Q. All right. It says, the suggestions made by

0166

1 the law department undoubtedly maximizes protection

2 against possible future product liability suits; on the

3 other hand, cancer is a very emotional word. There is a

4 strong possibility people will react to it far beyond

5 the real danger involved. This is particularly true

6 when it appears on a label where the actual extent of

7 the risk is not explained. Did I read that right?

8 A. Yes.

9 Q. It's pretty apparent from reading that that

10 evidently the law department had suggested putting a

11 warning label that talked about the hazards of cancer on

12 the product, true?

13 MR. BICKS: Objection to the form.

14 A. That appears to be the case.

15 Q. All right. And then --

16 A. You know, I take your word for the fact that

17 Marjorie Chamberlain is a lawyer, but I --

18 Q. She may not be. We've been told she is.

19 A. Okay.

20 Q. We've been told that by Union Carbide, but I

21 don't have personal knowledge of it.

22 Sir, the second paragraph, Mr. Rhodes'

23 comment is, we cannot predict with certainty what affect

24 the use of the proposed label will have on our business,

25 but the general feeling here is that it's likely to vary

0167

1 somewhere between serious and fatal. Did I read that

2 right?

3 A. Yes.

4 Q. Would you be shocked to find out that you all

5 decided not to put the cancer label on the product?

6 MR. BICKS: Objection to the form.

7 A. No, I wouldn't be shocked in lieu of what I

8 read down below. I mean, it's --

9 Q. Sir, isn't it true that this very document

10 shows us that Union Carbide had a greater concern about

11 the effect on sales than they did putting a cancer

12 warning label on the product?

13 A. I don't think that it necessarily does. I

14 mean, you know, one of the things -- if you look at

15 three below, the mesothelioma has only been clearly

16 associated with crocidolite inhalation, there is real

17 doubt that it can be caused by inhalation of chrysotile,

18 you know, I -- I think there was -- there's some good

19 information backing that concept up.

20 And basically speaking, you know, if I -- if

21 you look -- I'd -- I'd like to see specifically in terms

22 of making judgments on this what -- what our

23 toxicological report showed at this particular time

24 specifically with mesothelioma.

25 My recollection was by this time it said

0168

1 something to the effect that, you know, it's uncertain,

2 but, you know, our recommendation is that whenever

3 you're -- you're using our product, you know, in an open

4 form, you should be wearing respirators. And, you know,

5 based on that, I don't -- I'd like to read the rest of

6 it now too because I'm still looking at only part of

7 a -- part of a document.

8 Q. Well, in the interest of time, because the

9 lawyer has told me to cut my time short, I'll let him

10 give you a chance to do that. And I'd love to talk to

11 you about it some more, but what I'd like to do right

12 now is ask you, so do you believe you all put a cancer

13 warning label on there or you did not?

14 A. Well, you know, we had warning labels on

15 that, you know, were exactly what OSHA said we should

16 have on our bags.

17 Q. That wasn't my question. Did you put a

18 warning label on recommended by the legal department

19 that says cancer, can cause cancer, quote, unquote?

20 MR. BICKS: Objection to the form.

21 A. You know, I would doubt it, but I -- I

22 don't --

23 Q. And isn't it true Mr. Rhodes says the reason

24 he'd recommend against it is because the effect on the

25 business would be somewhere, quote, between serious and

0169

1 fatal, close quote?

2 A. Yes, I hear what Harry Rhodes said and I --

3 Q. Is that an adequate reason not to put a

4 warning label on a product, that it would affect your

5 sales?

6 A. No, but, you know, if -- if it really, you

7 know, isn't clear what the mesothelioma risk is, you

8 know, why -- why are we putting it on 244 bags.

9 Q. Sir, it's not just mesothelioma. That whole

10 thing said cancer. You've already testified today that

11 you've known for years, since you started it's been
12 clear, it's clear today, that chrysotile asbestos,
13 Calidria, can cause cancer --
14 MR. BICKS: Objection to the form.

15 BY MR. LANIER:
16 Q. -- right?
17 A. That's -- that's argumentative because we've
18 gone over this ground before in the sense that all
19 asbestos --
20 Q. Right.
21 A. -- all asbestos falls in that category.
22 Q. That's exactly my point.
23 A. And what we -- what we end up talking about
24 is that, you know, that's damnation in and of itself and
25 it doesn't make any difference how you use the product,
0170

1 and that's where I take issue with you.
2 Q. Sir, but my point is this: You've been
3 saying from the beginning you all have never said that
4 asbestos -- that your chrysotile is non-carcinogenic.
5 You've said from the beginning you all have always told
6 people it causes cancer?
7 A. No, no, no, no, no. You know, never on my
8 watch was it ever said that Calidria asbestos was
9 non-toxic.
10 Q. Okay. You have agreed on your watch you've
11 always said it causes cancer, right?
12 A. We've always said that it's carcinogenic.
13 Q. That means causes cancer, doesn't it?
14 A. Well, it can cause cancer --
15 Q. Okay.
16 A. -- if it's not used in the right -- right
17 way.
18 Q. Now, sir, you all weren't willing to put that
19 on your bags, though, were you? You weren't willing to
20 warn people of that, were you?
21 A. Well, we were -- what we were doing was we --
22 we -- our feeling was that it was probably unnecessary,
23 but we were going to warn people that it was
24 carcinogenic and say that whenever you had a dust
25 condition, you know, using our product, and particularly
0171

1 it was always said in the same breath with mesothelioma,
2 you should wear respirators.
3 Q. Sir, you didn't put it on the bags. You
4 wouldn't put it on the bags because it would be
5 somewhere between serious and fatal to your business,
6 right?
7 MR. BICKS: Objection to the form.
8 A. That was Harry Rhodes' assumption. I don't
9 know that I'd buy into that, to tell you the truth.
10 Q. Well --
11 A. I'd have to look at what was going on with
12 our sales effort at that particular time too.
13 Q. Next issue. I want to show you two exhibits,
14 Exhibit 5 and Exhibit 6 that were given to you by
15 Mr. Bicks. These are the two drywall articles.
16 Show me one place in either of those articles
17 on tape joint compound and drywall, one place where it
18 says you can get mesothelioma from the use of asbestos,
19 or cancer.
20 A. Well --
21 Q. It's not in there, is it?
22 A. Not in that article, no.
23 Q. Okay. Sir, the article you've got in front
24 of you that you just read doesn't make any reference at
25 all, the Union Carbide men that wrote that article made
0172

1 no reference at all to asbestos causing cancer or
2 mesothelioma, true?
3 A. You know, I think that, again, there's an
4 assumption on your part that, you know, you, through all
5 of this hysteria, never had notice that asbestos was
6 dangerous and, you know, basically, you know, our
7 obligation was to inform you as a customer what was
8 going on, but, you know, to sit there and say that we
9 are responsible for your product, which is what you seem
10 to be inferring, is -- you know, it kind of baffles me.
11 Q. Well, I'm not sure that Union Carbide lawyers
12 properly told you what our -- what we're saying, so let
13 me suggest to you this.
14 Sir, what we were told by Union Carbide is as
15 long as we kept exposures below the threshold limit
16 value, everything would be okay.
17 Now, isn't that the message you all were
18 telling?
19 A. Not -- that was the message obviously up to
20 the -- the time that you had me look at this -- this
21 report, but --
22 Q. Show me when that message changed.
23 A. Okay.

24 Q. When did it change? When did you all start
25 telling us the threshold limit value is not safe?
0173

1 A. Well, it -- it must have come up very soon
2 after this -- this report.

3 Q. When? I mean, when OSHA came out in '72 you
4 all told us the new OSHA limits were safe, as long as we
5 kept within those OSHA limits we were fine, and we
6 believed you.

7 MR. BICKS: Objection to the form.

8 BY MR. LANIER:

9 Q. Now, don't you think that if you all were
10 misrepresenting something to us, we ought to have a
11 right to come back and say, hey, guys, you should have
12 told us the truth?

13 MR. BICKS: Objection to the form.

14 A. All I can say is we were warning about
15 mesothelioma and saying because we are uncertain about
16 what this is all about, we -- our recommendation was
17 that you use respirators when -- when you saw any sign
18 of an -- of an asbestos dust count.

19 Q. Sir, that's not the recommendation you all
20 made to us.

21 Did you know that you all came out to our
22 plant and you tested our plant and you tested our
23 product and you said in almost every application, even
24 though there's a dust level, it's safe because the dust
25 level is low enough?
0174

1 A. Okay. What's --

2 Q. Did you know that?

3 MR. BICKS: Objection to the form.

4 A. What's the time frame on this?

5 Q. '72, '73, '74.

6 MR. BICKS: Objection to the form.

7 BY MR. LANIER:

8 Q. That's not this. That's a different
9 document, sir.

10 Did you know about that?

11 MR. BICKS: Objection to the form.

12 A. No, I didn't know that.

13 Q. Okay. If, in fact, that happened, then we
14 ought to have a right to come back to you and say, hey,
15 you should have been telling us the truth, right?

16 MR. BICKS: Objection to the form.

17 A. I think that basically speaking, you know,
18 you're asking me to make judgments with incomplete
19 information. I mean, if we were sending you toxicology
20 reports recommending respirators whenever you had a dust
21 count because of mesothelioma and the uncertainty, I
22 mean, these situations would -- would tell you nothing
23 more than you were within the threshold level, were or
24 were not within the threshold limit, but we were also
25 telling you a dust count and recommending in a separate
0175

1 document that our recommendation was that you use
2 respirators.

3 Q. Sir, there's no place you all ever told us
4 that we were over the dust count. You all told us the
5 opposite, that as long as we were under the threshold
6 limit, we didn't need to worry about respirators and we
7 could sell our product without warning users to use
8 respirators.

9 MR. BICKS: Objection to the form.

10 BY MR. LANIER:

11 Q. Did you know that was going on?

12 MR. BICKS: Objection to the form.

13 A. I -- I sort of doubt it, but --

14 Q. Okay. So I'd need to show the jury that --
15 that you all told us that, and the Carbide lawyer should
16 show the jury that you all told us wherever you've got a
17 dust count use a respirator, and that's kind of what
18 you'd want the jury to see?

19 A. That's right.

20 Q. Okay. New document, the Sayers report we
21 call it at trial.

22 A. Okay.

23 Q. This was put out by Mr. Sayers over in
24 England in '67 or whatever.

25 Have you seen this documents?
0176

1 A. You know, I don't remember seeing the
2 document, but I certainly remember, you know, the
3 discussion of the Sayers report came up during my
4 briefing. And, you know, it's a -- what can I tell you
5 about the guy?

6 He went out, got a book out of a library, a
7 compilation of a bunch of articles on asbestos, mostly
8 dealing with crocidolite, South African crocidolite. He
9 was the kind of guy that, you know, had to be the center
10 of attention.

11 Without attribution he went back and wrote a
12 report, and, you know, we find whole pieces of this
13 thing were just copied out of this -- this book which
14 was, you know, general public knowledge and brought it
15 back.

16 And he certainly got everybody's attention
17 right off the bat, but when it comes right down to it,
18 you know, what did it -- it didn't tell us in the final
19 analysis when we finally discovered this non-attribution
20 and looked at it that it was a very serious sort of
21 thing to deal with.

22 Q. So your understanding is this is just some
23 report kind of a renegade guy did that your company
24 never put much stock in?

25 A. Well, it took us a while to, you know, sit
0177

1 back and take a look at it apparently. Again, it
2 happened before my watch, but by the time I came along,
3 nobody was very much concerned with what he had said in
4 there.

5 Q. So it would be fair to say where he writes
6 things like, we're not entitled under any circumstances
7 to state our material is not a health hazard --

8 A. Yes, but we don't --

9 Q. -- if it's believed a potential customer
10 would use our material dangerously and he's unaware of
11 the toxicity question, it must surely be our duty to
12 caution him, to you that's just irrelevant?

13 A. No, no, no, it's not irrelevant. You know, I
14 think what we were saying was we were doing that. I
15 mean, you know, if --

16 Q. So you think that the useful, important
17 information in the Sayers report you all were already
18 giving to everybody?

19 A. You know, it was anybody that wanted to go to
20 a library and -- and read -- read information on
21 asbestos would come -- come across everything he said in
22 there, and some very questionable documents appeared.

23 Q. Sir, I've got employees who have worked for
24 Union Carbide that tell -- that worked at the processing
25 plants or the mill, I guess you call it --
0178

1 A. Yes.

2 Q. -- that are testifying that Carbide always
3 told them don't worry, our asbestos won't hurt you, no
4 safety hazards. Did you know that?

5 MR. BICKS: Objection to the form.

6 A. You know, I certainly never heard anything
7 like that.

8 Q. Did you know that Union Carbide bought back
9 some houses of people out there in California that
10 worked for you all because they took the Calidria home
11 and used it in their houses?

12 A. No, I didn't know anything about that.

13 Q. Did you know that you had workers out there
14 that were contract labor at the actual mine itself?

15 A. Well, I know at the mine we did use contract
16 labor, but --

17 Q. Did you know that you never kept track and
18 did medicals on those contract laborers, especially the
19 Mexican immigrants?

20 MR. BICKS: Objection to the form.

21 A. No, I didn't know that, but, you know, it --
22 that wet ore would seem -- always seem to me to preclude
23 any sort of a dust hazard out there.

24 Q. But yet you all used Mexican immigrant labor
25 on a contract basis out there. You'd work them for a
0179

1 few months and then send them on, never keeping up with
2 who they were or what their health condition was; isn't
3 that right?

4 MR. BICKS: Objection to the form.

5 A. That was unknown to me. I didn't --

6 Q. You didn't know that was going on?

7 MR. BICKS: Objection to the form.

8 A. No.

9 Q. What do you think the contract laborers were?

10 A. Well, I mean, contract laborers, I didn't --
11 you know, I didn't know they were Mexican, but I thought
12 they were casual laborers that we picked up, and I
13 thought we probably were, you know, tracking them as far
14 as our -- our health program is concerned.

15 Q. Did you know that your company won't release
16 to us the health records of the employees that worked
17 out there?

18 MR. BICKS: Objection to the form.

19 A. That doesn't surprise me.

20 Q. Well, sir, you and your company claim that no
21 one ever got sick out there, none of the King City
22 workers ever got an asbestos disease, but no one will
23 let us see the records. Doesn't that -- doesn't that

24 kind of smell?

25 MR. BICKS: Objection to the form.

0180

1 A. I don't know that it necessarily does. I

2 mean, if it's a -- you know, a slight asbestos or some,

3 you know, alterations or you get the people who are

4 looking at chest x-rays, there are doctors who can come

5 to somewhat different conclusions, but, you know,

6 it's -- in terms of a, you know, real full-blown cancer

7 case out there, you know, I -- I have been told and I

8 believe that there have been none among the workers.

9 Q. And we're not allowed to see the records to

10 see if you even kept up with the migrant or immigrant

11 workers, right?

12 MR. BICKS: Objection to the form.

13 A. You've told me that we didn't. I mean,

14 that's the only information I've had on that, and all I

15 said is that it would surprise me. I -- my information

16 would -- you know, my inclination would be to the

17 contrary, but --

18 Q. You don't know one way or another?

19 A. I don't know.

20 Q. Do you know about Paul Whitlock's death

21 certificate?

22 A. No, I don't know about it.

23 Q. Paul Whitlock worked out there, and he died

24 in 1991. And his death certificate says that asbestos

25 was one of the causes of his death, but Mr. Myers got

0181

1 that altered by the coroner to take asbestos out. Did

2 you know about that?

3 MR. BICKS: Objection to the form.

4 A. Well, you know, I know about the case. You

5 know, he was convinced that it was a mistake, and he had

6 the mistake corrected.

7 Q. He being Mr. Myers?

8 A. Yes.

9 Q. What business of it -- of his is the

10 coroner's death certificate of Paul Whitlock?

11 A. Nothing more than, you know, the fact that he

12 became aware that a mistake was made, that they had

13 violated the law by not having an autopsy and insisted

14 that the law be observed.

15 Q. You think --

16 A. That's my understanding.

17 Q. And where did you get that from?

18 A. Well, I got that from -- from Mr. Myers.

19 Q. When did you talk to him?

20 A. Lord, you know, like a long time ago, shortly

21 after I got back from Zimbabwe.

22 Q. So when? When did you find out about the

23 altered death certificate?

24 MR. BICKS: Objection to the form.

25 A. I guess, you know, mid '90s someplace.

0182

1 Q. You think that Union Carbide -- I think you

2 said it was part of your culture that the manager would

3 be responsible for health and safety and that Union

4 Carbide's culture was to take care of the health and

5 safety of the individual, make it most important?

6 A. That's correct.

7 Q. But you all wouldn't spend \$5,000 to make

8 sure everybody had coverall service to keep asbestos off

9 their coveralls unless you were ordered to by

10 California. Did you know that?

11 MR. BICKS: Objection to the form.

12 A. Yes, I knew that. That was Thurber's

13 determination because he -- he thought that it, you

14 know, was all on the basis -- on the basis of all of the

15 information available to him that it wasn't necessary.

16 (Rawlings Exhibit No. 23 was marked for

17 identification.)

18 BY MR. LANIER:

19 Q. Sir, let's be -- let's be clear. Exhibit

20 Number 23 is the documentation we have to that effect

21 that your company wasn't going to spend \$5,000 to keep

22 everybody from taking asbestos home on their clothes and

23 having it all around them, you were going to save \$5,000

24 unless ordered to by California; is that right?

25 MR. BICKS: Objection to the form.

0183

1 A. That's what it says, yes.

2 MS. PRINZ: Is that 25?

3 MS. HEGAR: It's 23.

4 MR. LANIER: It's 23.

5 BY MR. LANIER:

6 Q. You don't have any clue why Union Carbide was

7 out there buying the houses of the people that took

8 Calidria home and put it in their houses?

9 A. When you say put it in their houses, put it

10 where?

11 Q. I don't know.
12 A. They were just taking bags of asbestos and
13 putting them in their house?
14 Q. They may have been using it for insulation in
15 the attic. I'm not sure what they were doing, but Union
16 Carbide bought the houses back, remediated them and then
17 sell them back or give them back to the employees.
18 MR. BICKS: Objection to the form.
19 BY MR. LANIER:
20 Q. Did you know about that?
21 MR. BICKS: Objection to the form.
22 A. No.
23 Q. That doesn't seem right, does it?
24 MR. BICKS: Objection to the form.
25 A. Well, again, I mean, you're asking me
0184
1 questions about things where I don't know the
2 circumstances, and I'm trying --
3 Q. How many people worked at the King City mine
4 if we count contract laborers?
5 MR. BICKS: Objection to the form.
6 BY MR. LANIER:
7 Q. How many people worked at the King City mine
8 if we count contract laborers?
9 A. I don't really know how many people that
10 Carbide put out, you know, from the mill to go out
11 and -- and kind of look at the mining operation, but I
12 know all of the mining that was done and the trucking
13 was done by contract labor.
14 Now, you know, the kind of supervision we put
15 on that I -- I don't really know. I suppose one or two
16 people, maybe even one, went out and -- and kept track
17 of what was going on during the mining period.
18 Q. But how many of the laborers, the contract
19 laborers, were out there doing that mining?
20 A. I don't know how many there were. There
21 can't be too many doing that because it's a relatively
22 simple operation.
23 Q. Okay. New subject. You testified to
24 Mr. Bicks that you're sure that the managers would have
25 made sure all of the employees were safe from asbestos
0185
1 hazards because it would come out of their bonus if the
2 employees were in danger?
3 A. No. It would come out of Larrison's bonus,
4 it would come out of my bonus if it took place.
5 Q. But sir, you know that asbestos is going to
6 take 30 or 40 years before it starts hurting people and
7 showing up.
8 Is it going to come out of your bonus today
9 for the damage that was done back then?
10 A. Well, you know, I -- I can only object to
11 what you're imputing to me there very strongly that for
12 some reason I took that into calculation and all of this
13 stuff.
14 Q. I don't think you did. I'm just saying, when
15 you say on the record, Mr. Rawlings, that you all took
16 care of the asbestos health of the employees because it
17 would have come out of your earnings if they'd gotten
18 sick, well, sir, they're not going to get sick for 30
19 years or so. That -- that doesn't come into play, in
20 all fairness, right?
21 It's not like a crane is falling on their
22 neck that day. It's something that's not going to
23 happen for 30 years.
24 It's not going to affect your bonus if those
25 fellows got sick, is it?
0186
1 MR. BICKS: Objection to the form.
2 A. I -- I resent the -- the inference.
3 Q. Okay. I'm not trying to say you
4 affirmatively thought, hey, I don't care if they get
5 sick, it's going to be 30 years.
6 All I'm trying to do is say your idea that,
7 hey, I wouldn't let them get sick from asbestos, it
8 would affect my bonus, that's not accurate because the
9 asbestos sickness wouldn't happen for 20 or 30 years, it
10 wouldn't affect your bonus one way or the other, you're
11 done, right?
12 MR. BICKS: Objection to the form.
13 A. (No response.)
14 Q. You don't like it either way. All right.
15 A. I don't like it either way.
16 Q. Let me ask you this: You -- you don't make
17 any more money from Union Carbide today, do you?
18 A. I'm a retiree. I have a bonus -- or not a
19 bonus. I have a retirement benefit.
20 Q. So you -- you look to the company for your
21 retirement?
22 A. Yes.
23 Q. And it's a set amount that you receive on --

24 on a regular basis?
25 A. Yes.

0187
1 Q. And it doesn't vary by whether you're
2 available to do this kind of work or anything like that?
3 A. That's right. It doesn't vary.
4 Q. All right. Next issue.
5 MR. BICKS: Can I just, before you go on, can
6 you tell me how much time?
7 THE VIDEOGRAPHER: On this tape, 57 minutes.
8 MR. LANIER: And I'll let you know I'm down
9 to my last five minutes or so.

10 BY MR. LANIER:
11 Q. Sir, when Union Carbide sold materials like
12 asbestos to customers, would it be proper for the
13 customer to rely upon Union Carbide's information about
14 that product as being correct?
15 A. I would say yes.
16 Q. Okay. Next subject. Do you know about Union
17 Carbide losing money in the Asbestos Division before
18 your watch?
19 A. Yes.
20 Q. Union Carbide made a decision about whether
21 or not to just sell out immediately and take the loss or
22 to try and work to turn the unit profitable and then
23 sell it, right?
24 A. Yes. It was -- it was based on the RG
25 product, if we could do it.

0188
1 Q. And you were one of the people brought in to
2 try and get the place turned around making a profit,
3 true?
4 A. I suppose that, yes, that's true.
5 Q. And then the goal was if you all could get
6 enough people buying it and make it profitable, at that
7 point in time you all would consider selling it and you
8 might not have to take a loss, true?
9 A. Yes, that's all true enough.
10 Q. And in essence, that's what happened; you all
11 turned it around, made a little bit of profit and then
12 wound up selling the mine in '85, true?
13 A. Well, I mean, we had a failure with probably
14 the best mousetrap that's ever been designed. I mean,
15 the sales, you know, just were -- never reached anywhere
16 near the point that it, you know, as a business made any
17 sense any longer.
18 Q. But at least you were able to -- to turn
19 around the negative numbers you all had in the '60s,
20 right?
21 A. Yes, to very minimal profit numbers, but --
22 Q. Right. And then were you aware of how the
23 mine got sold to King City Asbestos Corporation, KCAC?
24 A. I don't -- I don't really know anything about
25 that. I mean, I was busy in another -- another venue by

0189
1 that time.
2 Q. Well, I know when you came back from Zimbabwe
3 you kept up your relationship with Mr. Myers, who I
4 believe went to KCAC and ran it?
5 A. You know, I -- I think I vaguely remember
6 hearing -- hearing that, yes.
7 Q. I mean, you talked to him in the '90s because
8 he told you about changing the death certificate, right?
9 MR. BICKS: Objection to the form.
10 A. The only thing I was interested in talking to
11 him about was is anybody sick. I mean, you know, that
12 was --
13 Q. That was weighing on your mind?
14 A. Well, it wasn't weighing on my mind. I
15 just -- I always had this idea that if somebody smoked
16 25,000 cigars every day of his life and came down with
17 lung cancer out there, that Carbide, you know, would --
18 would be the person they'd look to.
19 But what I was being told was, you know,
20 we're not even running that risk because there isn't
21 anybody that has asbestosis, let alone cancer.
22 Q. And, of course, no one is allowed to look at
23 the records to see. You know that?
24 MR. BICKS: Objection to the form.
25 A. You know, that -- you've -- you've told me

0190
1 that.
2 Q. And you know the death certificate was
3 changed?
4 MR. BICKS: Objection to the form.
5 A. I had heard that it was changed, but it was
6 changed because of an error.
7 Q. That's what you've been told?
8 A. Yes.
9 Q. You didn't talk to the actual people? Did
10 you know the widow was never told it was changed?

11 MR. BICKS: Objection to the form.
12 A. No.
13 Q. Sir, did -- do you know when the mine was
14 sold, did Union Carbide have any interest at all in the
15 KCAC?
16 A. I haven't any idea.
17 Q. Okay. Did you know any other people with the
18 new owner other than Mr. Myers?
19 A. You know, I -- I don't have any recollection
20 of anybody being there.
21 Q. You talked about media frenzy. You used that
22 word, I think, about eleven times or so at least.
23 You're not suggesting that every day in the
24 newspaper there were articles saying, here is the truth
25 about asbestos, are you?

0191
1 MR. BICKS: Objection to the form.
2 A. Well, you know, it -- it probably is an
3 overstatement, but definitely it had become a darling of
4 the news media and there were, you know, untold news
5 articles. You know, it comes up in television
6 presentations, and a lot of the data that they presented
7 was questionable, arguable or plain wrong, but --
8 Q. Right. And that was you all's position on
9 it, that -- that that was not a reliable source of
10 information, you all wanted your side of the story to be
11 out there that asbestos could be used safely, true?
12 A. That's correct.
13 MR. LANIER: I'll pass the witness. Thank
14 you, sir.
15 MR. BICKS: Why don't we just take a short
16 break and we'll get organized.
17 MR. LANIER: Okay.
18 THE VIDEOGRAPHER: Off the record. The time
19 is now 3:36. Off the record.
20 (Recess taken from 3:36 p.m. to 3:54 p.m.)
21 THE VIDEOGRAPHER: On the record. The time
22 is now 3:54. On the record.
23 REDIRECT EXAMINATION

24 BY MR. BICKS:
25 Q. Good afternoon, Mr. Rawlings.

0192
1 A. Good afternoon, Mr. Bicks.
2 Q. Let me cover some topics that the lawyer for
3 Kelly-More covered with you.
4 The first topic I want to cover is, when did
5 Kelly-More first sell products with asbestos? Do you
6 remember that general discussion that we were having?
7 A. You know, I -- I don't recall, but I'm
8 guessing that it goes back -- the first time they sold
9 asbestos-bearing material?
10 Q. Right. Let me just show you some -- you
11 remember just the discussion on the topic --
12 A. Yes.
13 Q. -- putting aside the details?
14 A. That's right.
15 (Rawlings Exhibits No. 24 and 25 were marked
16 for identification.)
17 BY MR. BICKS:
18 Q. Okay. Let me show you Exhibit 24 and Exhibit
19 25. Exhibit 24 is a history of Kelly-Moore's Drywall
20 Division production and sales prepared by somebody named
21 Doug Merrill at Kelly-Moore, and Exhibit 25 is a set of
22 sworn interrogatory answers prepared by Kelly-Moore.
23 Do you have both of those in front of you?
24 A. Yes, I do.
25 Q. And you know as a -- as a lawyer that

0193
1 interrogatory answers that are sworn by a company are
2 supposed to be truthful, right?
3 MR. LANIER: Objection; leading.
4 A. Yes.
5 Q. Look, if you would, at the first paragraph of
6 the history of Kelly-Moore's Paco Drywall Division's
7 production and sales. Do you see that?
8 A. Yes.
9 Q. And what does that say?
10 A. Well, it said the corporation was founded in
11 1958, manufactured drywall joint compounds and wall
12 textures and sold to distributor principals principally
13 in Northern California, of which Kelly-Moore was the
14 largest distributor.
15 Q. Kelly-Moore was the largest distributor of a
16 company that used asbestos in tape joint compounds in
17 1958, right?
18 MR. LANIER: Objection; leading.
19 A. Right.
20 Q. Is that what the document says?
21 A. That's what it says, yes.
22 Q. And look at the interrogatory answers that
23 are before you. Do you see those?

24 A. Yes.
25 Q. And just so we're clear, these are
0194
1 interrogatories filed in the United States District
2 Court, Southern District of Texas, Corpus Christi
3 Division, by Kelly-Moore, and do you see a list of
4 product names on the page that's before you?
5 A. This page?
6 Q. Right.
7 A. Yes.
8 Q. And it lists on the left several products,
9 one, two, three, four, five, six, seven, eight, nine,
10 ten, eleven, twelve, thirteen, fourteen, fifteen,
11 sixteen, seventeen, eighteen, nineteen, twenty, over
12 twenty-one products sold by Kelly-Moore that contained
13 asbestos, right?
14 A. Yes.
15 Q. And look over to the column that says first
16 manufactured. Do you see that?
17 A. Yes.
18 Q. And does that indicate that Kelly-Moore was
19 manufacturing products with asbestos in 1960?
20 A. Yes, it does.
21 Q. So when you testified that Kelly-Moore was
22 selling products with asbestos before Union Carbide sold
23 any asbestos to them, do these documents show that you
24 were right?
25 MR. LANIER: Objection to form.
0195
1 A. Yes.
2 Q. When, Mr. Rawlings, based on a review of
3 these documents, was Kelly-Moore selling products that
4 had asbestos in them?
5 A. Well, I mean, you know, first manufactured
6 12/60, that's seems to be the first date there.
7 Q. Right. And then if you looked at Exhibit 24,
8 does that indicate that they were distributing products
9 with asbestos before 1960, looking at the introductory
10 paragraph?
11 MR. LANIER: Objection; leading.
12 A. I'm looking at the first page here?
13 Q. Right, Exhibit 24, the first paragraph.
14 A. Well, it looks like maybe 1968 was the date
15 they first went into operation, but, you know, I'm not
16 sure about what the -- in '67 it said we set up a
17 drywall manufacturing operation in Houston, Texas, in
18 order to be more competitive, and this operation
19 continued until 1974, at which time it closed. I don't
20 know that that indicates what -- when they first started
21 to sell.
22 Q. Right. Right. But look at the first
23 paragraph. The Paco Textures Corporation was founded in
24 1958?
25 A. Correct.
0196
1 Q. And then it says that it manufactured drywall
2 joint compounds and wall textures and sold to
3 distributors --
4 A. Kelly-Moore --
5 Q. -- principally in Northern California, of
6 which Kelly-Moore was the largest distributor?
7 MR. LANIER: Objection.
8 A. Yes.
9 Q. Okay. So Kelly-Moore -- does this indicate
10 that Kelly-Moore was distributing products with asbestos
11 prior to 1960?
12 MR. LANIER: Objection; leading.
13 A. It would certainly seem that way.
14 Q. Okay.
15 MR. LANIER: Can I see your copy of that?
16 Thanks.
17 BY MR. BICKS:
18 Q. Let me ask you about an exhibit you were
19 shown, Exhibit -- I believe it's Exhibit 8. Do you have
20 that before you?
21 A. Yes.
22 Q. Okay. Can you open that up to the first
23 page, the -- I'm looking at page -- my page at the
24 bottom is page number one.
25 A. Yes.
0197
1 Q. Do you see the third paragraph from the top
2 that starts with, of course?
3 A. Yes.
4 Q. Can you read that to the jury?
5 A. Of course, our performance has been a great
6 deal better than the national all-industry average, but
7 this really doesn't say much. The national average
8 includes all of the small concerns who have never had
9 very good records but whose total employment far
10 outnumbers concerns of major size, so they influence the

11 average more.

12 We also have performed better even than the

13 chemical industry average. This says more, but again,

14 it ducks behind the little -- the little concerns in

15 much the same way.

16 Q. Okay. Now, you were -- let me back up for a

17 minute.

18 The Asbestos Group at Union Carbide, what

19 division was that in?

20 A. Well, it -- it came over sometime prior to --

21 to 1971 from the Chemical Division, one of the Chemical

22 Division companies.

23 Q. And it went over into the Mining and Metals

24 Division, right?

25 A. That's correct.

0198

1 Q. Okay. Take a look at the safety record at

2 page eight of the Mining and Metals Division. Do you

3 see that?

4 A. Yes.

5 Q. And this says, does it not, that -- and I'm

6 looking at the bottom of this. It says, starting from

7 its Deremo ore mine --

8 A. Yes.

9 Q. -- also has an outstanding frequency record,

10 winning the Sentinel of Safety Award --

11 A. Wait a minute. I'm missing page eight for

12 some reason.

13 MR. LANIER: It's out of order on that. It's

14 nine and then eight.

15 A. Okay. It's nine and then eight. Okay.

16 Q. Are you with me now on page eight?

17 A. Yes, I am.

18 Q. And are you with me under where it says the

19 Mining and Metals Division?

20 A. Yes.

21 Q. And it says -- read with me where it starts,

22 there were no disabling injuries at all in four of its

23 coal mines. Do you see that?

24 A. Yes.

25 Q. And it says, its Deremo ore mine also had an

0199

1 outstanding frequency record, winning the Sentinel of

2 Safety Award for 1968. M & M, meaning Mining and

3 Metals, ore mines have won this three times in the last

4 seven years, more often than any US company in the last

5 ten years.

6 A. Yes.

7 Q. Does that reflect the safety record of the

8 Mining and Metals Division?

9 A. Yes, and it's certainly in keeping with, you

10 know, what my -- my recollection is of the safety record

11 in Mining and Metals.

12 Q. You remember that you were shown a document,

13 a letter involving a company called Baker Castor Oil.

14 Do you remember that?

15 A. Yes.

16 Q. And you've also testified about the Union

17 Carbide toxicology reports. Do you remember that?

18 A. Yes.

19 (Rawlings Exhibit No. 26 was marked for

20 identification.)

21 BY MR. BICKS:

22 Q. Take a look at Exhibit UCC 209, which is --

23 MS. PRINZ: Rawlings 26.

24 BY MR. BICKS:

25 Q. -- Rawlings 26, and this is a call report

0200

1 that involves Baker Castor Oil Company, right?

2 A. Yes.

3 Q. And would you read for the jury what is under

4 the action part of this memo under the name HBR?

5 A. Send toxicology information; done 7/19/71.

6 Q. Did Baker Castor Oil get Union Carbide's

7 toxicology information?

8 A. I'm sure they did.

9 Q. And we've looked at some of that and I'm

10 going to ask you questions about it in a minute, but did

11 those toxicology reports talk about the possibility that

12 asbestos could cause asbestosis and cancer?

13 A. Certainly by that time they did.

14 Q. You were also shown what was Rawlings Exhibit

15 10, which was a June 22nd, 1972 memorandum from

16 Mr. Ingalls. Do you remember that?

17 A. Yes.

18 Q. And by the way, do you remember what

19 territory of the United States Mr. Ingalls had as a

20 salesperson?

21 A. As I recall, it was the eastern United

22 States.

23 Q. And do you know the Kelly-Moore is -- does

24 business in the western part of the United States?
25 A. It's based on information I heard today that
0201
1 they are solely in the western US.
2 Q. And so Mr. Ingalls would not have even been
3 dealing with Kelly-Moore, would he have?
4 MR. LANIER: Objection; leading.
5 A. I don't think so.
6 Q. Would Mr. Ingalls have dealt with
7 Kelly-Moore?
8 A. No. I mean --
9 Q. You also indicated that when you found out
10 about this memorandum that you had reprimanded
11 Mr. Ingalls. Do you remember that?
12 A. Yes.
13 Q. Do you think that was the right thing to do?
14 A. Yes.
15 Q. Was he, by the way, in sales anymore after he
16 wrote this memorandum?
17 A. No. I recollect we moved him back to the
18 technical side of the house.
19 Q. Did he end up back in the laboratory?
20 A. Yes.
21 Q. Let me ask you something. Do you believe as
22 a general matter that it's important to look at what
23 people do in determining whether their actions are
24 reasonable?
25 A. Yes, I do.
0202
1 Q. Do you know what kind of material Mr. Ingalls
2 was sending to customers about the risks of asbestos?
3 A. Well, I'm sure he was sending the toxicology
4 report. You know, there might have been other
5 information too.
6 Q. Let me show you what we will mark as --
7 MS. PRINZ: Rawlings 27.
8 (Rawlings Exhibit No. 27 was marked for
9 identification.)
10 BY MR. BICKS:
11 Q. -- Rawlings 27. Mr. Rawlings, is this an
12 October 12th, 1971 memorandum from Mr. Ingalls to
13 somebody named Dennis Bridge, the manager of
14 environmental control at PPG Industries, Inc.?
15 A. It appears to be, yes.
16 Q. And can you read to the jury the introductory
17 paragraph to this memo?
18 A. Pursuant to our telephone conversation
19 yesterday, I have enclosed a copy of a report, quote,
20 Airborne Asbestos, unquote, prepared by the Committee on
21 Biologic Effects of Atmospheric Pollutants of the
22 Division of Medical Sciences, National Research Council.
23 It is a comprehensive report on asbestos, and I think it
24 puts the facts in their proper perspective.
25 Q. And let's mark as the next exhibit --
0203
1 MS. PRINZ: 28.
2 (Rawlings Exhibit No. 28 was marked for
3 identification.)
4 BY MR. BICKS:
5 Q. -- Rawlings 28. Is this a copy of the 1971
6 National Academy of Sciences report?
7 A. It certainly seems to be, yes.
8 Q. And how many pages is this report?
9 A. Fifty-three.
10 Q. And those 53 pages, the last part of this
11 report from page 34 to 53, all it is is references to
12 articles that talk about the potential hazards of
13 asbestos, right?
14 A. That's correct.
15 Q. Is that the kind of information that Union
16 Carbide was giving out to its customers?
17 A. Well, certainly we did -- we gave them
18 information of that nature quite frequently.
19 Q. Can you think of a more comprehensive report
20 on the hazards of asbestos than this National Academy of
21 Sciences report prepared in 1971?
22 A. It certainly seems very complete.
23 Q. Let me ask you, you were shown some
24 correspondence with a company called Degussa. Do you
25 remember that?
0204
1 A. Yes.
2 Q. Was Degussa a competitor of Union Carbide?
3 A. Yes.
4 Q. Do you think in those letters that you saw
5 that Degussa was really concerned about the safety of
6 their customers?
7 A. Not in my opinion.
8 Q. What is your view of what their concern was?
9 A. My -- my view is simply this, that they had
10 been competing against us. They looked -- they looked

11 at the results that came out initially on RG-244 and
12 found out the price and the -- the quality of the
13 product far exceeded the fume silica. I think the price
14 was lower. The -- the product did a better job.
15 They immediately approached us and said, let
16 us distribute it in Europe. Beyond that, I think that
17 basically as they started to run into some of the
18 problems we had with customers with 244 in the United
19 States and the customers were saying, well, you know,
20 we're uncertain about this thing and asking for
21 important information, I think Degussa just suddenly
22 said, hey, we've got an out here, we can hint, you know,
23 very broadly that -- that the use of -- of 244 is -- is
24 unsafe, it's a carcinogen, it -- in addition, something
25 that I'd never heard before, it will nauseate you, and
0205
1 that they did it just as an opportunistic thing to get
2 out of selling 244 and reintroduce their product.
3 And then, you know, in one of the exhibits
4 that I was shown -- shown by Plaintiff's counsel it
5 indicated that they had some stocks of 244 they
6 delighted -- you know, would be delighted to sell to
7 them, but when they were exhausted -- and they'd like a
8 purchase order right now of their fume silica product.
9 It just seems indicative to me that they were trying to
10 take advantage of the -- of the frenzy, if you will.
11 Q. Did any of the Degussa letters talk about the
12 safe handling practices that Union Carbide referred to
13 in its toxicology reports?
14 A. No, none of them did.
15 Q. Did any of those disclosures talk about the
16 importance of wearing respirators --
17 A. No.
18 Q. -- to make sure that people are protected?
19 A. No, they did not.
20 Q. Now, you were asked some questions about
21 whether or not you had seen the Mellon studies. Do you
22 remember that?
23 A. Yes.
24 Q. Let me show you --
25 MS. PRINZ: Rawlings 29.
0206
1 (Rawlings Exhibits No. 29 and 30 were marked
2 for identification.)
3 BY MR. BICKS:
4 Q. -- what we'll mark as Rawlings Exhibit 29.
5 Have you seen this document before?
6 A. Let me just read it a minute.
7 Q. You'll see up on the top that it says 1971 --
8 A. Yes.
9 Q. -- Mellon Institute report. Have you seen
10 this before?
11 A. I'm not sure.
12 Q. Take a look at the back for the distribution
13 of it and all of the people it was distributed to and
14 see if it at all refreshes your recollection of
15 information that you may have seen when you met to learn
16 about the risks of asbestos.
17 A. Well, the only thing that suggests that I
18 might have been involved in -- in the briefing is the
19 one that was sent to the Mining and Metals library in
20 Tuxedo, New York.
21 Q. And just so we're clear, can you just
22 describe generally for the jury the distribution that
23 was made of this Mellon report, who these people are on
24 this distribution list?
25 A. Well, Szabo and Zutty were -- you know, and
0207
1 Murray were all at least vice presidents in -- in one of
2 the Chemical Plastics Divisions. I don't remember which
3 one. I don't -- South Charleston Division received a
4 copy. Tauber, Barr and Ackart doesn't mean anything to
5 me. T.H. Welch, the name sounds familiar, but I
6 don't -- but it's really widely distributed.
7 Q. And just so we're being fair to you, sir,
8 we're talking about -- today we're here in 2003 and
9 we're talking about documents that are over 30 years
10 old, right?
11 A. Yes.
12 Q. Okay. Just looking at who this document was
13 distributed to, this document --
14 A. I'm sorry; it -- I overlooked the top of it.
15 It went to Dernehl.
16 Q. All of the medical directors had this
17 document?
18 A. He's a medical director. And it went to
19 McDaniel, who was the industrial hygienist assigned to
20 the asbestos operation.
21 Q. It was also in the library at Union Carbide?
22 A. Yes, in the Chemical Division library, right.
23 Q. And I want you to look at on the second page

24 of this document, do you see the paragraph that says, in
25 essence? It's the fourth one down.

0208

1 A. Yes.
2 Q. Then I want you to skip down four sentences
3 where it says in general. Are you with me?
4 A. (No response.)
5 Q. It says, in general, because of the
6 overwhelming preponderance of effect in the asbestos
7 dosed lungs versus the controlled --
8 A. You've lost me. You're talking about four
9 sentences down?
10 Q. Four paragraphs down. Do you see that?
11 A. Yes.
12 Q. This paragraph that says --
13 A. Fourth paragraph down, okay, and it starts,
14 in essence?
15 Q. Right.
16 A. And you want me to pick up where?
17 Q. And then just go down four sentences where it
18 says, in general.
19 A. Okay.
20 Q. And it says there that in general, because of
21 the overwhelming preponderance of effect in the asbestos
22 dosed lungs versus the controls, we have sufficient
23 evidence of damage to warn us to do our best to prevent
24 inhalation of concentrations of asbestos in excess of
25 the threshold limit value proposed for 1970, right?

0209

1 A. Right.
2 Q. Was Union Carbide telling its customers in
3 its toxicology reports to avoid exposure in excess of
4 threshold limit values?
5 A. Well, I think so, but where is the toxicology
6 report? Can I see one?
7 Q. We're going to look at a couple of them in a
8 minute.
9 A. Okay.
10 Q. Is there anything that when you look at the
11 conclusion here that is of a surprise to you about what
12 Union Carbide thought?
13 A. No.
14 Q. Is it consistent with what Union Carbide told
15 people?
16 A. You know, this reference to the -- the tests
17 here is -- okay.
18 Q. Let me just ask you a general question. Do
19 you think it's important to -- for people to know the
20 whole story rather than just a little piece of it?
21 A. Well, true enough. I mean, you know, with
22 the Degussa case, when I'm asked to answer questions
23 without knowing all of the circumstances, it does make
24 it difficult.
25 MR. LANIER: Objection; unresponsive.

0210

1 BY MR. BICKS:
2 Q. Let me show you a memorandum from Dr. Dernehl
3 dated March of 1970, and in terms of your view on the
4 hazards of asbestos, did Dr. Dernehl have input on the
5 kind of information that you were provided?
6 A. He certainly did, major input.
7 Q. Do you see the third paragraph of this which
8 refers to the tests that were done on Calidria asbestos?
9 A. Yes.
10 Q. And do you see where it says that the results
11 of this test showed Calidria asbestos to be slightly
12 more fibrogenic than long fiber asbestos, but the
13 difference was not so great as to suggest an usual
14 degree of hazard; from this I conclude that the same
15 precautions to avoid breathing asbestos dust must be
16 observed whether the dust be from Calidria asbestos or
17 from a standard long fiber form?
18 A. Yes.
19 Q. Is that what you understood?
20 A. That's always what I understood, I mean, you
21 know, that -- that basically the long fiber forms and
22 particularly crocidolite there was a -- there was a
23 great deal of evidence to indicate that it was more --
24 more -- more toxic than Calidria asbestos, and this, of
25 course, absolutely jibes with what I was -- what I was

0211

1 told.
2 Q. And do you see the last paragraph here that
3 says, some people believe there's an association between
4 exposure to asbestos dust and the development of lung
5 cancer and mesothelioma; there is no information
6 regarding Calidria asbestos in this respect as yet? Do
7 you see that?
8 A. Yes.
9 Q. The Mellon studies, the one of them that you
10 have in front of you there, that didn't deal with

11 cancer, did it?
12 A. No, it didn't.
13 Q. Do you know, in fact, in the Mellon studies
14 where the animals were injected?
15 A. Well, they were injected in the throat and in
16 the lining of the stomach, as I recall.
17 Q. And do you recall how large the doses were
18 that these rats got?
19 A. Well, they looked -- looked large to me, but,
20 you know, I don't -- I don't know what -- what large is.
21 Q. Let me ask you this: Is injecting rats in
22 the stomach and in the windpipe with large doses of
23 asbestos, does that have anything to do with the way
24 humans breathe?
25 A. I wouldn't think so, but I don't really know.

0212
1 Q. Do you see where we were talking about in
2 this March 21st, 1970 memo from Mr. Dernehl where he
3 says at the end that it would be prudent to assume that
4 Calidria asbestos will behave like other asbestos in
5 this regard, the last sentence?
6 A. Yes. That seems to me to be a, you know, a
7 conservative approach.
8 Q. Do you think it's a good thing when you're
9 dealing with safety and health to be conservative?
10 A. Yes, I do. I think it's, you know, it's a
11 good thing to do.
12 Q. And was that the way Union Carbide was when
13 you were involved in the asbestos business?
14 A. Yes.
15 Q. Now, I want to ask you about threshold limit
16 values. Do you remember that series of questions about
17 what Union Carbide told its customers about threshold
18 limit values?
19 A. Yes.
20 Q. Do you know who set threshold limit values,
21 who determined what they should be?
22 A. OSHA.
23 Q. And OSHA was, in 1972, that was the United
24 States government?
25 A. Yes.

0213
1 Q. Union Carbide didn't set threshold limit
2 values, did it?
3 A. No.
4 Q. And remember you were asked questions
5 about --
6 MR. LANIER: Objection; leading.
7 BY MR. BICKS:
8 Q. Did Union Carbide set threshold limit values?
9 A. No.
10 Q. Remember you were asked questions about what
11 the threshold limit values were in 1966, 1967 and 1968.
12 Do you remember that series of questions?
13 A. Yes, I do.
14 Q. Did asbestos -- did threshold limit values go
15 down over time?
16 A. Markedly.
17 Q. So when you're looking at what somebody says
18 about a threshold limit value, is it -- is it important
19 to know the particular time period that they're talking
20 about?
21 A. Yes, I think it's important.
22 Q. The threshold limit value that existed in
23 1966 and '67, was that something that was determined by
24 something called the American Conference of Governmental
25 Industrial Hygienists?

0214
1 A. Yes. They would set it out, and then
2 apparently it would be adopted by states and the federal
3 government. As I remember, it was adopted by a federal
4 standard, but it was their recommendation that was
5 followed.
6 Q. And when the threshold limit value changed
7 over time, did Union Carbide disclose that to its
8 customers?
9 A. Yes, it certainly did.
10 Q. Remember you were shown a document by
11 Mr. Dernehl where he was talking about the report by
12 Mr. Sayers. Do you remember that?
13 A. Yes, I do.
14 Q. And actually, let me just see that for a
15 moment.
16 MR. LANIER: Don't mark the court exhibit,
17 please. Don't highlight the court exhibit, please.
18 BY MR. BICKS:
19 Q. Do you see the first full paragraph that
20 talks about the threshold limit value and whether or not
21 it's acceptable for asbestosis? And I'm talking about
22 this page, the second page. Do you see that?
23 A. The second page, the first full paragraph?

24 Q. Yes.
25 A. Yes, I see it.

0215
1 Q. And what does that say, just that first
2 sentence?
3 A. The question was raised whether the 5 million
4 particles per cubic foot was still valid as the
5 threshold limit value. I maintain that value is still
6 correct in terms of preventing the disease asbestosis.
7 Q. Okay. Now, stop there. The Union Carbide
8 toxicology report that was dated 1966 or 1964 that
9 Mr. Lanier showed you --
10 A. Yes.
11 Q. -- do you see that?
12 A. Yes.
13 Q. Can I just see it for one second, please? I
14 don't have copies of this. I want you to focus on the
15 sentence, it is now generally accepted that a man can
16 work a 40-hour work week for a lifetime without
17 developing asbestosis if the asbestos dust particle
18 count is kept at or below 5 million particles per cubic
19 foot of air. Do you see that statement?
20 A. Yes, 5 million cubic feet, though. That's --
21 Q. Right. And is Dr. Dernehl saying there that
22 he agrees that when it comes to asbestosis, that that is
23 the right threshold limit value?
24 MR. LANIER: Objection; leading.
25 A. That's correct.

0216
1 Q. Okay. And then he raises in the next part of
2 the letter that you've got, he says that -- and I'm
3 paraphrasing it -- it's possible that it may not be low
4 enough to protect against mesothelioma, right?
5 A. Yes.
6 Q. He doesn't know?
7 A. Yes.
8 Q. Okay. And you were asked questions about
9 whether or not Union Carbide disclosed that uncertainty
10 to customers. Do you remember that?
11 A. Yes.
12 Q. Let me show you what we will mark as the next
13 exhibit --
14 MS. PRINZ: 31.
15 MR. BICKS: -- Rawlings 31.
16 MS. PRINZ: What's the date?
17 (Rawlings Exhibit No. 31 was marked for
18 identification.)
19 BY MR. BICKS:
20 Q. This is a letter, is it not, from
21 Mr. Dernehl, the associate medical director, to a
22 company called Imperial Chemical Industries Limited, the
23 Paints Division, in England. Do you see that?
24 A. Yes.
25 Q. And he's talking to this customer about the
0217
1 risks of asbestos, right?
2 A. Yes.
3 Q. And look at the second paragraph where he
4 says, my present opinion is that the threshold limit
5 value of 5 million particles per cubic foot of air is
6 adequate to protect against asbestosis, right?
7 A. Yes.
8 Q. And that's exactly what he said when he saw
9 the Sayers report, right?
10 MR. LANIER: Objection; leading.
11 A. Yes.
12 Q. And then can you go down to the sentence not
13 that says in general, but skip one where it says, I am
14 not prepared to say whether the 5 million particle level
15 will also protect against mesothelioma?
16 A. Yes. Right.
17 Q. Can you read that to the jury what he tells
18 this customer?
19 A. I am not prepared to say whether the 5
20 million particle level will also protect against
21 mesothelioma. Presumably it may not, but convincing
22 data is not now known to me.
23 Q. All right. So let's stop right there. The
24 medical director is telling a customer in 1967 that he
25 is not prepared to say whether the 5 million particle
0218
1 level will also protect again mesothelioma, presumably
2 it may not, but convincing data is not now known to me,
3 right?
4 MR. LANIER: Objection; leading.
5 A. That's right.
6 Q. He's saying he doesn't know at this time,
7 right?
8 MR. LANIER: Objection; leading.
9 A. Right.
10 Q. Take a look at the 1969 Union Carbide

11 asbestos toxicology report. It was attached to Exhibit
12 2.
13 Do you have that in front of you,
14 Mr. Rawlings?
15 A. Yes, I do, and this is where I got confused
16 when I --
17 Q. Because you got confused because when -- when
18 the Kelly-Moore lawyer was asking you questions about
19 the toxicology reports, he didn't show you this.
20 And did he show you that letter, by the way,
21 from Mr. Dernehl to the customer?
22 MR. LANIER: Objection to form.
23 BY MR. BICKS:
24 Q. Did he show you that?
25 A. I don't think so.

0219
1 MR. LANIER: Objection.
2 BY MR. BICKS:
3 Q. Okay. Look at the last paragraph here where
4 it talks about mesothelioma. Do you see that?
5 A. Yes, I do.
6 Q. And can you read the last two sentences to
7 the jury where it says, from the data available?
8 A. From the data available, it appears that the
9 TLV of 5 million parts per cubic foot may not be low
10 enough to protect against mesothelioma. Research on
11 this problem conditions.
12 Q. Very simple question, sir, Kelly-Moore's
13 expert has said they got this document, and you -- based
14 on Union Carbide's practice, do you agree with that?
15 MR. LANIER: Objection to form.
16 A. Yes, I agree to it.
17 Q. Simple question, did Union Carbide tell
18 Kelly-Moore that from the data available, it appears
19 that the threshold limit value of 5 million particles
20 per cubic foot may not be low enough to protect against
21 mesothelioma?
22 A. Yes, that's what it says.
23 Q. And remember we had talked about that the
24 threshold limit values were reduced over time. Look at
25 the beginning of this, the large paragraph, the second

0220
1 paragraph that now -- that says, it is -- it has been
2 generally accepted. Are you with me there?
3 A. It has been generally -- the beginning of the
4 paragraph?
5 Q. Right. Now drop down where it says, although
6 no cases of asbestosis are known. Do you see that? And
7 then it talks about the ACGIH.
8 A. Right.
9 Q. Can you read the end of that sentence
10 starting with the ACGIH?
11 A. The ACGIH, paren, which sets the threshold
12 load limit value TLV in the USA, close paren, has
13 indicated they intend to lower the TLV for asbestos to 2
14 million particles per cubic foot in an effort to
15 increase the safety factor incorporated in the limit.
16 Q. And here is Union Carbide disclosing to
17 Kelly-Moore that the threshold limit value will be
18 reduced in the future?
19 A. Yes. It seems like it, yes.
20 Q. And do you think that's a good thing to do?
21 A. Well, it's consistent with, you know, all of
22 the general policies that I thought were in place.
23 Q. Were you shown, by the way, from the lawyer
24 from Kelly-Moore any documents from Kelly-Moore's
25 insurance company talking to it about the threshold

0221
1 limit values? Were you shown any of those?
2 A. No.
3 Q. I want to ask you again, do you agree that
4 it's important to know the whole picture?
5 A. Indeed I do.
6 Q. Let me show you --
7 MR. LANIER: Objection to the form on that.
8 BY MR. BICKS:
9 Q. -- a 1972 document that we'll mark as --
10 MR. PRINZ: Rawlings 32.
11 (Rawlings Exhibit No. 32 was marked for
12 identification.)
13 BY MR. BICKS:
14 Q. Take look at Rawlings Exhibit 32. Do you
15 have that in front of you, Mr. Rawlings?
16 A. Yes, I do.
17 Q. And this is dated on the front it's a July
18 7th, 1972 document, evaluation of airborne asbestos, and
19 what's the company that's listed right on the cover
20 page, right on the top, first page?
21 A. Kelly-Moore Paints, Incorporated, San Carlos,
22 California.
23 Q. And go to page -- the discussion part of this

24 document, which is four pages in, where it says right at
25 the top, threshold limit value and toxicology.

0222

1 A. Yes.

2 Q. And do you see that first paragraph where
3 it's saying -- it says, while the present standard for
4 permissible exposure to asbestos fibers in the air is
5 five fibers greater than five microns in length per
6 milliliter of air for an eight-hour workday, this value
7 is being reduced to two fibers per milliliter for an
8 eight-hour exposure by 1976? Do you see that?

9 A. Yes, I do.

10 Q. Do you actually remember that the threshold
11 limit value was being reduced from five fibers per
12 milliliter or cubic centimeter to two?

13 A. Well, that -- that happened in the OSHA --
14 the first OSHA Act. It said that this is effective, you
15 know, '72, and then four years later, in '76, it's going
16 to two.

17 Q. And can you read to us that last sentence in
18 that paragraph that says, however? It's the first
19 paragraph.

20 A. However, due to the high toxicity of
21 asbestos, it is suggested that all concentrations be
22 kept as near zero as possible.

23 Q. Is that the kind of information that
24 Kelly-Moore, based on this, was getting from its
25 insurance company?

0223

1 A. It certainly appears that that's the
2 information they got.

3 Q. And is this the same kind of information that
4 Union Carbide was telling them in 1969 where it said the
5 threshold limit value then may not be low enough to
6 protect against mesothelioma?

7 A. That's correct.

8 Q. Look, if you will, in that same -- under
9 Roman number one, the last paragraph which says, more
10 recently, evidence indicating asbestos fibers in the
11 development of mesothelioma, a form of cancer, has been
12 introduced. Do you see that?

13 A. Yes.

14 Q. Was Union Carbide telling Kelly-Moore about
15 mesothelioma three years before this insurance company
16 document?

17 A. I think it was, but, you know, I -- I want to
18 see a document. Well, this document says it, you know.

19 Q. The 1969 Union Carbide toxicology report --

20 A. Yes.

21 Q. -- says that, right?

22 MR. LANIER: Objection; leading.

23 A. Yes.

24 Q. Does the Union Carbide 1969 toxicology report
25 say that about mesothelioma?

0224

1 MR. LANIER: Objection to form.

2 A. Yes, it does.

3 Q. Look at this paragraph for me that we were
4 looking at, and we were talking about the sentence that
5 said, more recently, evidence indicating asbestos fibers
6 in the development of mesothelioma, a form of cancer,
7 has been introduced. Are you with me?

8 A. Yes.

9 Q. And it goes on to say, while the emergency
10 standard of five fibers per milliliter is at present
11 based upon exposure to fibrosis, we should nonetheless
12 take into account the fact that exposures to even small
13 quantities of asbestos fibers over a short period of
14 time may lead to the development of mesothelioma in a
15 certain percentage of the exposed workers.

16 Is that very similar to what Union Carbide
17 was telling Kelly-Moore three years earlier?

18 A. That looks like, you know, they lifted the
19 language.

20 Q. Let me show you another document that deals
21 with Kelly-Moore, which is an asbestos survey dated
22 December 15th, 1976.

23 MS. PRINZ: It's Rawlings 33.

24 (Rawlings Exhibit No. 33 was marked for
25 identification.)

0225

1 BY MR. BICKS:

2 Q. Were you shown this document by the lawyer
3 for Kelly-Moore?

4 A. No, I don't remember that I was.

5 Q. What does this say right up in the first
6 paragraph? What company is this talking about?

7 A. Kelly-Moore Paints Incorporated, San Carlos,
8 California.

9 Q. And it says asbestos survey, right?

10 A. Right.

11 Q. Go to page two, if you will. Do you see the
12 discussion that talks about toxicity and then health
13 standard right in the middle?
14 A. Yes.
15 Q. Look at the health standard paragraph. Are
16 you with me?
17 A. Yes.
18 Q. Do you see where it says that health
19 standards are guidelines to protect most workers and
20 should not be accepted as absolute values with which all
21 workers will be protected?
22 A. I see that.
23 Q. And it goes on to say, for these reasons it
24 is the best policy to keep air concentrations of
25 asbestos as low as possible. Do you see that?
0226
1 A. Yes.
2 Q. Does every single person who works in the
3 chemical field understand that this is what threshold
4 limit values mean?
5 A. Well, I'm sure they did. They -- they -- I'm
6 trying to think how it was phrased in the Act, that the
7 threshold limit value was -- was not a guarantee,
8 because they use this language about predisposition and
9 other things that, you know, might alter it, but they
10 said they felt like it was a minimal risk incurring, you
11 know, a great number of -- a minimal or acceptable risk,
12 I can't remember what they said, contracted cancer if
13 you kept the -- if you observed the threshold limit
14 value.
15 Q. Right. Remember that you were asked some
16 questions by counsel for Kelly-Moore where he referred
17 to Kelly-Moore as a mom and pop operation. Do you
18 remember that?
19 A. Yes.
20 Q. Do you know that Kelly-Moore sold about \$78
21 million worth of products with asbestos in them?
22 A. No, I didn't.
23 Q. Would that surprise you?
24 A. It would surprise me from what counsel said.
25 Q. Does that sound like a mom and pop operation?
0227
1 A. No, it doesn't.
2 Q. And by the way, do you have a sense as to how
3 much asbestos Kelly-Moore bought from Union Carbide
4 during the time period that you were in charge of the
5 business?
6 A. I did -- did have occasion to review that at
7 one time, because we were very minimal participants in
8 their business and we were selling them less than \$1,000
9 worth a year in the early period of time. The only time
10 we ever exceeded that was when there was a strike in --
11 in Canada and they were unable to get material from that
12 source. Then we went up to about \$4,000 a month.
13 Q. Let me ask you about this Glidden-Durkee call
14 report that you were shown. Do you remember you were
15 pointed at the sentence which talked about the asbestos
16 toxicology report?
17 A. Yes.
18 Q. And it says under observations and then you
19 see the sentence which says, he felt that should such a
20 report fall into the hands of their production people,
21 it would cause considerable concern to say the least.
22 Do you see that?
23 A. Yes.
24 Q. Isn't the reason it would cause concern,
25 Mr. Rawlings, is because the report, the asbestos
0228
1 toxicology report, talked about asbestosis, lung cancer
2 and mesothelioma?
3 MR. LANIER: Objection; leading.
4 A. Well, you know, it's hard to say how you
5 could go further than that, but -- but I, you know --
6 Q. Well, let me ask you this, sir: You got a
7 copy of this document, right?
8 A. Yes.
9 Q. Is that a fair reading of what this is
10 saying, that what this person was concerned about was
11 that the asbestos toxicology report raised issues and
12 told people about hazards which could cause concern?
13 MR. LANIER: Objection; leading.
14 A. I think that's a fair interpretation of
15 the -- of the language.
16 Q. And let me ask you this: Was the purpose of
17 giving out toxicology reports which talk about
18 asbestosis, lung cancer and mesothelioma to raise some
19 concern among the customer?
20 MR. LANIER: Objection; leading.
21 A. It -- it certainly was to raise some concern
22 and -- and, you know, it said how. The important thing
23 is how you handle the danger, and you should never

24 exceed the TLV and anywhere where you would encounter
25 dust, you know, you should be using respirators.

0229

1 Q. Now, let me also ask you this one.
2 Kelly-Moore was a paint company, right?
3 A. That's what I understand, yes.
4 Q. And do paint companies work with chemicals?
5 A. Well, certainly they do, importantly lead up
6 until a certain point.
7 Q. Would it -- did you know that Kelly-Moore had
8 lead in its paint for some time?
9 A. I would suspect that early on they did
10 because most paint companies did.
11 Q. Are paint companies companies that are
12 familiar with using chemical products?
13 A. They'd have to be familiar with all of the
14 chemicals they're using.
15 Q. Now, let me ask you, you were asked questions
16 about could a customer rely on Union Carbide. Do you
17 remember that series of questions?
18 A. Yes, I do.
19 Q. Do you think that customers of Union Carbide
20 have responsibility to do some of their own homework and
21 know about the products that they're making and selling?
22 A. Certainly not to the extent that other --
23 other materials, not Union Carbide materials, are
24 involved in those products.
25 I mean, we can't be held accountable for all

0230

1 of their -- their formulations. That doesn't make any
2 sense at all. In fact, you know, we couldn't even be --
3 we may not, you know -- first of all, we may -- probably
4 don't know what all of them are.
5 Q. Formulas that companies use to make products,
6 those are proprietary generally, aren't they?
7 MR. LANIER: Objection; leading.
8 A. Yes, they are in most companies.
9 Q. Do you think Kelly-Moore had a responsibility
10 to do some homework on its own and test its product and
11 know a little bit about the kind of product it was
12 making and selling to people?
13 A. Well, you know, I think when you talk about
14 the frenzy, I mean, they -- they were put on notice like
15 everybody else that, you know, the product was getting
16 bad reviews, and, you know, I can't imagine that they
17 didn't look into it on an independent basis.
18 Q. Remember you were shown a document which
19 talked about cancer and whether or not cancer should be
20 on a warning label. Do you remember that?
21 A. Yes.
22 Q. Who determined by law what should be on the
23 warning label?
24 A. OSHA.
25 Q. Did Union Carbide follow the law?

0231

1 A. Absolutely.
2 Q. As a person who runs a company, do you think
3 it is a good idea to follow the law?
4 A. Indeed, yes.
5 Q. Do you remember what OSHA concluded in 1972
6 about whether or not cancer should be put on a label?
7 A. They thought it was too alarmist and rejected
8 the idea.
9 Q. And even though OSHA rejected the idea, did
10 Union Carbide give out toxicology information that
11 talked about the possibility of cancer being caused by
12 asbestos?
13 A. Yes, we did.
14 Q. You were asked some questions about asbestos
15 generally and whether or not asbestos can cause
16 different types of disease. Do you remember that?
17 A. Yes.
18 Q. I take it as you are here today, are you here
19 as a medical expert about all of the science that talks
20 about different types of asbestos and whether or not
21 they can cause cancer?
22 A. No, I'm not.
23 Q. Do you think it was the right thing to do for
24 Union Carbide during the time period you were involved
25 to treat Calidria like other types of asbestos and to

0232

1 tell people that there were risks that had to be looked
2 out for?
3 A. Yes. I think that, you know, the information
4 that I had at that point in time indicated that
5 crocidolite was, you know, much more toxic from the
6 standpoint of mesothelioma than other asbestos products.
7 That is to say the other side of that is chrysotile
8 would be -- would be less toxic, but, you know,
9 certainly we weren't going to try and contend that there
10 was a difference.

11 MR. BICKS: I think we have to change the
12 tape.
13 THE VIDEOGRAPHER: This is the end of tape
14 number three. Off the record. It's 4:46 p.m.
15 (Discussion off the record.)
16 THE VIDEOGRAPHER: On the record. The time
17 is now 4:39. This is tape four of the deposition of
18 Mr. Rawlings. On the record.
19 BY MR. BICKS:
20 Q. Mr. Rawlings, you were asked some questions
21 about published articles in a magazine called GECI
22 Drywall that talk about asbestos and silica dust. Do
23 you remember that?
24 A. Yes.
25 Q. Take a look at page two. Do you see that
0233
1 chart in the middle there?
2 A. Yes. I'm having trouble reading it, but I
3 see it.
4 Q. Yes. And you look over on the right side and
5 you'll see discussions about data reported by
6 Mr. Nicholson. Do you see that?
7 A. Yes.
8 Q. Did Union Carbide publish information that
9 talked about data that Dr. Nicholson and Dr. Selica of
10 Mount Sinai came up with?
11 A. Yes, we did.
12 Q. And was this data of Dr. Nicholson and
13 Dr. Selica something that was helpful to the sales of
14 asbestos, do you know?
15 A. No, it certainly wasn't.
16 Q. But Union Carbide published it anyway?
17 MR. LANIER: Objection; leading.
18 BY MR. BICKS:
19 Q. Did Union Carbide publish it anyway?
20 MR. LANIER: Objection; leading.
21 A. Yes. Yes, we did.
22 Q. And let me go back again, because I want to
23 make sure the jury is -- is clear.
24 Did Union Carbide actually, again, put in
25 public documents that were available to people in the
0234
1 paint industry statements about mesothelioma, lung
2 cancer and asbestosis?
3 A. Yes, we did.
4 Q. And did you allow that to take place?
5 A. Yes.
6 Q. Did you encourage it?
7 A. Certainly the answer is yes, because what we
8 wanted to do was to put that information out and then go
9 to stage two, which was, but you can use it safely if
10 you, one, keep the -- the dust count as low as you
11 possibly can and whenever there's a dust count at all
12 wear the -- the masks.
13 Q. Look at this article that Mr. Myers wrote
14 that is in front of you, and I asked you about this
15 before. It's not the drywall article, though, the
16 handling asbestos, chrysotile asbestos and plastics
17 article.
18 A. Yes.
19 Q. And -- and we looked at on the second page of
20 this the discussion about asbestos hazard. Do you see
21 that?
22 A. Yes.
23 Q. And does this state for the world to see
24 under mesothelioma that there is some evidence that
25 mesothelioma can occur after brief exposures to
0235
1 relatively high fiber levels?
2 A. It does.
3 Q. You were shown a document that dealt with
4 coveralls at the King City mill. Do you remember that?
5 A. Yes.
6 Q. Do you know that, in fact, Union Carbide
7 purchased those coveralls for the workers?
8 A. I don't recall that, but that doesn't
9 surprise me.
10 Q. Why doesn't it surprise you?
11 A. Well, it's a -- it -- I guess again
12 conservatism in terms of not having them wear while they
13 were in the -- in the mill clothes that they would take
14 home.
15 MR. LANIER: I had an objection to, did you
16 know that they had, in fact, bought them, as
17 leading. Thank you.
18 BY MR. BICKS:
19 Q. Well, let me ask you this: Based on what you
20 know about Union Carbide, do you think that Union
21 Carbide purchased those coveralls for the workers?
22 A. I think it's probable, but I don't really
23 know.

24 Q. And who would know that, the people at the
25 plant level?
0236

1 A. Yes.
2 MR. LANIER: Objection; leading.
3 MR. BICKS: I have nothing further. Thank
4 you.

5 Mr. Lanier, just so my -- my objection is on
6 the record, I'm going to allow you to ask some
7 questions, but I think it's not -- inconsistent with
8 what the judge has ruled, which was that you were to
9 go for an hour and a half, I was to go for an hour
10 and a half, you were to go for an hour and a half
11 and then I was to conclude, and that was a very
12 clear ruling by the judge.

13 RECROSS EXAMINATION

14 BY MR. LANIER:
15 Q. Sir, let's start out with your knowledge
16 about Kelly-Moore. Kelly-Moore distributed Paco
17 products starting in '58.
18 Is that what you've now read into the record?
19 A. They were -- they were distributing it to
20 Kelly-Moore, which was their primary customer.
21 Q. Okay. It doesn't say asbestos products
22 there. It's talking about the reams of different
23 products Paco made that did not have asbestos in them,
24 maybe some of them did.
25 It doesn't say one way or the other, does it?
0237

1 A. No, it does not.
2 Q. Okay. You're not saying you know for certain
3 when Kelly-Moore started making them or started selling
4 or any of that mess; ask the Kelly-Moore people, right?
5 A. (No response.)
6 Q. Right?
7 A. Right.
8 Q. Okay. You don't need to look at that.
9 That's just the documents we were looking at.
10 The next subject. On the ten-year safety
11 failure exhibit, do you remember that --
12 A. Yes, sir, I do.
13 Q. -- the document entitled ten-year safety
14 failure by Union Carbide?
15 A. Yes.
16 Q. Sir, the bottom line is, you all were seven
17 out of seven, weren't you, last place?
18 A. Overall that's what it shows.
19 Q. And your --
20 A. The last place versus the chemical industry
21 generally.
22 Q. Right. Compared to companies that you should
23 be compared to, right?
24 A. I don't think so. I mean, I think that the
25 fact that you would include a Linde Division in Mining
0238

1 and Metals in there, it isn't necessarily fair. I mean,
2 Mining and Metals, mining by its very nature is a much
3 more risky business. I think that the chemical industry
4 is generally.
5 Q. Sir, your ten-year failure record, the safety
6 failure, says that you all were seventh out of seven in
7 comparable industries, doesn't it?
8 MR. BICKS: Objection to the form.
9 BY MR. LANIER:
10 Q. That's what it says, isn't it?
11 A. Well, but then it goes on to say that the
12 chemical industry generally is the comparable industry.
13 I mean --
14 Q. Right. And that you all were seventh out of
15 seven, right? It lists them in order?
16 A. Yes. And now we have Union Carbide Canada in
17 there, and I don't know what that's all about, to tell
18 you the truth.
19 Q. Well, you just -- I only brought that up
20 because you started out today talking about the
21 wonderful culture and the Carbiders and the fact that
22 you all just were so safety conscious as an industry.
23 I'm looking at it, and you've got the worst safety
24 record and you even put out documents that say you all
25 had a safety failure.
0239

1 That's -- that's the story, isn't it?
2 MR. BICKS: Objection to the form.
3 A. Well, I -- you know, I take issue with that
4 being the whole story at least in -- particularly in
5 terms of referring to asbestos.
6 Q. Okay. Next subject. The Ingalls memo that
7 says set the mood, do you remember that one?
8 A. What's this memo?
9 Q. The Blare Ingalls memo that says set the
10 mood, you know, embarrass them --

11 A. Yes.

12 Q. -- humiliate them and all of that stuff. You

13 now have testified from the Carbide lawyer that Ingalls

14 only worked in the eastern United States, not the West,

15 so he never would have dealt with Kelly-Moore. Do you

16 remember that?

17 A. That's correct, yes.

18 Q. So in other words, he might have told

19 everybody to embarrass people and humiliate them and to

20 set the mood to manipulate sales, but that wouldn't have

21 applied to Kelly-Moore, that was just being done in the

22 East Coast. Is that what I'm understanding?

23 MR. BICKS: Objection to the form.

24 A. You know, it -- it definitely was the case it

25 got stopped in its tracks, I mean, you know, that

0240 particular presentation.

2 Q. You haven't shown me one piece of paper, you

3 don't even have one, that says you all retracted that, a

4 memo out to all those different people, don't follow

5 what Ingalls said, we're going to fire him or we're

6 going to demote him.

7 I mean, there's nothing like that anywhere,

8 is there?

9 MR. BICKS: Objection to the form.

10 A. I haven't seen anything in terms of paper,

11 but I can tell you as a matter of fact that memo was

12 brought to my attention early on and I let them know in

13 no uncertain terms -- it was easy to communicate to that

14 group because they were so small -- that, you know,

15 enough of this nonsense, it isn't going to happen here.

16 Q. By the way, if Ingalls only dealt with people

17 on the East Coast, why did he send a copy of that to

18 Myers?

19 A. Well, Myers was the overall manager. I mean,

20 he was --

21 Q. Not just East Coast but West Coast, wasn't

22 he?

23 A. Yes.

24 Q. Myers, in fact, was out in California, wasn't

25 he?

0241 A. Well, at some point in time he was out there.

2 He started out being in Niagara Falls.

3 Q. So you got the -- the California man on that

4 memo from Ingalls, West Coast, don't you?

5 A. No, no, no. Ingalls sent it to everybody.

6 You know, he was suggesting that they follow this

7 procedure when they were having 244 questions.

8 Q. All right. So not fair to say that Ingalls

9 was just saying this is East Coast policy? He sent that

10 out across the board, didn't he?

11 MR. BICKS: Objection to the form.

12 A. I think, you know, it's unlikely that -- that

13 that presentation or that approach was ever used with --

14 with your company.

15 Q. Now, are you saying that Ingalls got demoted

16 because of this?

17 A. No. He got sent back to the lab where he

18 belonged.

19 Q. But not because of this memo, that just

20 happened later?

21 A. No, I think the close proximity, it had --

22 certainly had something to do with it.

23 Q. And we just can't see his file so that we can

24 read to see if that's accurate or not?

25 MR. BICKS: Objection.

0242 BY MR. LANIER:

2 Q. You don't have a copy of it and you're not

3 showing it to us, nobody is showing us his file, right?

4 MR. BICKS: Objection to the form.

5 A. That he went back to the laboratory?

6 Q. Why he left, why he left sales, why he went

7 back to the lab. We're not privy to any of those

8 records that would show us what really happened?

9 A. I assume you haven't -- haven't any of those

10 records in your possession.

11 Q. Now, Ingalls sent a big toxicology report to

12 Pittsburgh Plate Glass, PPG Industries. Do you remember

13 being asked about that, Exhibit 27?

14 A. Yes.

15 Q. PPG was no stranger to asbestos, were they?

16 A. No, PPG wasn't a stranger to asbestos.

17 Q. In fact, PPG was in the same club that you

18 all were in sharing all of the knowledge back and forth,

19 weren't they --

20 MR. BICKS: Objection to the form.

21 BY MR. LANIER:

22 Q. -- the Industrial Hygiene Foundation?

23 MR. BICKS: Objection to the form.

24 BY MR. LANIER:
25 Q. Did you know that?
0243
1 A. You know, I don't recall that was true, but I
2 don't -- on the other hand, I -- you know, I can't say
3 that it wasn't.
4 Q. Yes. I mean, the fact that you all are
5 willing to share information with other people in the
6 same club that have all of the same data, that doesn't
7 mean anything in terms of Kelly-Moore, does it?
8 A. Not only -- it just reflects an attitude
9 towards the customer.
10 Q. Well, it reflects an attitude towards another
11 club member who is paying the same money to keep the
12 same information out about asbestos?
13 MR. BICKS: Objection to the form.
14 BY MR. LANIER:
15 Q. That's what it shows, isn't it?
16 MR. BICKS: Objection to the form.
17 A. Again, you keep asking me questions where I
18 don't have all of the information in front of me. It's
19 hard for me to answer those questions.
20 Q. You understand it's Mr. Bicks you've gotten
21 to meet with time after time after time, month after
22 month, deposition after deposition. I just met you
23 today. I didn't give you all of this information. He's
24 supposed to give you that. Do you understand that?
25 MR. BICKS: Objection to the form.
0244
1 BY MR. LANIER:
2 Q. I mean, do you understand Mr. Bicks kept
3 saying, well, let's get the whole story out there? You
4 have looked to Mr. Bicks to bring you documents and show
5 them to you, haven't you?
6 A. Certainly to a certain extent, yes.
7 Q. And you've never called me up and said,
8 Lanier, I've got to give a deposition, get out here and
9 tell me the whole story, have you?
10 MR. BICKS: Objection to the form.
11 A. I don't -- you know, I don't expect you to do
12 that, but I just -- it makes it hard for me to answer
13 the questions.
14 Q. That's okay. I mean, if you want me to and
15 your lawyer would let you, I'd be glad to sit down with
16 you and show you the whole story, but they won't let me.
17 A. No.
18 Q. Do you understand?
19 MR. BICKS: Objection to the form.
20 BY MR. LANIER:
21 Q. All right. Let's change subjects. Degussa,
22 in your mind they were a bad company, weren't they,
23 doing some bad things?
24 A. In my view they were guilty of very sharp
25 practices.
0245
1 Q. You would agree with me there are good
2 companies in this world and there are bad companies in
3 this world, just like people, right?
4 A. Yes, that's true.
5 Q. And there are companies that do things that
6 are out of line, and those companies need to get
7 punished, wouldn't you agree?
8 A. Well, you know, they -- they had a no
9 punishment situation really, I mean, with all of the --
10 the data presentation. The thing that they were guilty
11 of was not -- you know, we furnished them information on
12 toxicology and the various risks and -- and what we were
13 suggesting in terms of customer usage, and they -- they
14 don't mention this at all.
15 All they do is just say, well, you know,
16 asbestos is bad stuff, and moreover they say, you know,
17 it's noxious. I mean, you know, I don't know where the
18 hell that came from because I never heard that one
19 before.
20 Q. They may be the translation. I don't know
21 what the German word was.
22 A. Yes, well, I don't know.
23 Q. Sir, but you'd agree with me as a principle
24 that if they're out of line and they're doing things
25 that are wrong, you ought to be able to sue them and you
0246
1 ought to be able to bring them to justice, shouldn't
2 you?
3 A. Based on the advice of counsel I had at the
4 time, they said that, you know, the game isn't worth the
5 candle.
6 Q. Fair enough. If the game had been worth the
7 candle, though, that's what courts are for, and you
8 recognize that as a lawyer and Union Carbide does, don't
9 they?
10 A. Well, I think, you know, you look at it in

11 terms of, you know, is it a case where you settle or do
12 you, you know, back off because it's going to cost you
13 too much. It's -- it's something that really doesn't
14 come back and bear on the issue at hand. As you say,
15 they are bad folks. I agree with that.

16 Q. All right. Next subject. Exhibit Number 29
17 you were asked questions about. That's a Mellon study
18 about the hazards of you all's asbestos. Do you see
19 that?

20 A. Yes, I do.

21 Q. Now, sir, that's 1971, isn't it?

22 A. Yes, this is the '71 report and --

23 Q. I'm sorry. Mr. Bicks has handed you a
24 different report than the one we've been talking about.
25 We were talking about one back in the '60s, weren't we?

0247

1 A. Yes, you were, and that's the one that I
2 wasn't aware of.

3 Q. Yes. This one in the '70s, first of all,
4 aside from being a different report, it still says that
5 the only bottom line is don't breathe in excess of the
6 TLV, doesn't it?

7 A. That's right.

8 Q. Because the TLV is safe is what you all were
9 telling everybody, right?

10 A. Except that we don't have enough data on
11 mesothelioma, and so what we're going to say there is
12 that it behooves that, you know, all of you, whenever
13 you detect dust, to wear respirators.

14 Q. And where does it say that in -- in any of
15 the documents you've looked at today?

16 A. In this document.

17 Q. All right. Let's start there. Where does it
18 say it in that '71 study, wear a mask because of
19 mesothelioma?

20 A. (No response.)

21 Q. And to save us time, sir, I'll tell you it
22 isn't in there. Will you take my word for that?

23 A. Okay. You know --

24 Q. Yes. Well, if -- if you can find -- you'll
25 get a chance to review your deposition. If you can find

0248

1 where in all of these toxicology reports it says if
2 there is asbestos dust wear a mask because of
3 mesothelioma, I'd like you to point that out to me,
4 okay, when you review your deposition, because it's not
5 in there, sir.

6 A. Okay.

7 Q. Next question. You were asked about animal
8 studies, and you were asked, does that have anything to
9 do with how a human breathes, and you said, I don't
10 know. Do you remember those questions?

11 A. Yes.

12 Q. Are you saying that you all were funding a
13 bunch of useless studies that were bad science and the
14 guys were doing a horrible job and no one should ever
15 believe them?

16 A. Well, I think that's true from everything I
17 heard about this one.

18 Q. So did you all ask for your money back?

19 A. You know, what -- what it is -- I think I
20 remember once the -- one of the sweeteners that was
21 barred for a period of about eight years, and I forget
22 which one it was, and finally they released it again for
23 sale to the public and they -- they made a comment that
24 because of the massive doses that had been given to
25 rats, that the label on it ought to read that be aware

0249

1 of this -- this product is a -- is a threat to the
2 health of your rat. It's kind of in that category.

3 Q. All right. So you all were just funding a
4 bunch of useless studies?

5 MR. BICKS: Objection to the form.

6 BY MR. LANIER:

7 Q. I mean, in short, you just think they were a
8 bunch of useless studies and you don't know why all of
9 those -- you're speaking as a lawyer here, I recognize,
10 but you don't know why all of those science people kept
11 doing this, right?

12 A. You know, I don't know why this -- this one
13 was done within the limitations that were set on it.

14 Q. Okay. Next question. You were asked about
15 Dr. Dernehl's letter that's Exhibit 30, and you were
16 handed this one. And in your answer, as I heard you,
17 you said that you had always understood that other kinds
18 of asbestos and long fiber asbestos was more toxic. Do
19 you remember giving that answer?

20 A. Yes. That's my understanding of it.

21 Q. Sir, that memo doesn't say that long fiber is
22 more toxic than your short fiber?

23 A. No, but there were places, other places,

24 where it was said.
25 Q. Well, but Dernehl said the exact opposite.
0250
1 He said that that your short fiber might be more hazardous,
2 and that's what the '66 study showed, right?
3 A. Yes, but then later on he said in all -- you
4 know, in close proximity that there is so little data
5 it's hard to --
6 Q. Well, he never comes out and says what you're
7 claiming, that the long fiber is worse. He says that
8 the short fiber -- the only test result you all had that
9 compared them heads up showed short fiber more dangerous
10 than long fiber, true?
11 A. Go back and look at the OSHA document itself
12 where they talked about substantial evidence to the
13 effect that, you know, crocidolite and amosite are more
14 toxic than -- than other asbestos materials, and, you
15 know, you can -- I'm sure you can dig back in that
16 document and find the sources of that information that
17 were presented to OSHA. It didn't come from Union
18 Carbide, but it was -- it was there.
19 Q. Are you claiming today that Union Carbide
20 told Kelly-Moore that the five TLV or whatever the
21 current TLV was was not adequate for mesothelioma?
22 A. At -- at a period in time we did.
23 Q. When, and show me the document? If you'll
24 tell me what you're looking for, I've got some of them
25 over here, so if it's -- I might need to pull it out for
0251
1 you.
2 A. Help me out. It was one we were just looking
3 at there.
4 Q. Okay. Now, the lawyers found it and opened
5 up something and pointed it to you.
6 MR. BICKS: Do you want me to help?
7 MR. LANIER: I asked him, but that's okay.
8 MR. BICKS: Okay.
9 MR. LANIER: If you need to show it to him,
10 I'm not worried about it because we'll get to it
11 quicker.
12 BY MR. LANIER:
13 Q. The lawyer wants you to look here at Rawlings
14 Exhibit Number 7. This paragraph is where he pointed.
15 A third disease, mesothelioma, has more recently been
16 associated with persons exposed to asbestos. It's
17 extremely rare cancer of the lining of the chest or the
18 abdominal cavity. In contrast to the lung diseases,
19 there's some evidence meso can occur after brief
20 exposures, but it says to what?
21 A. Relatively high fiber levels.
22 Q. Relatively high fiber levels. Show me one
23 that says --
24 A. Okay.
25 Q. And I'll let the lawyer help you.
0252
1 A. No, but --
2 Q. Hang on. Show me one that says something
3 below the TLV.
4 A. You know, all I can do is refer you -- for
5 the moment to refer you back to the language in the OSHA
6 Act, and it says that, you know, that the evidence on
7 mesothelioma is -- is scant, but there is some evidence,
8 and I'm almost positive it said high concentrations over
9 a short period of time.
10 Q. Okay. Sir, we will have OSHA, and the jury
11 can read OSHA. I want to know where Union Carbide told
12 anybody -- you can do it, the lawyer can do it, someone
13 show me the document where Union Carbide told
14 Kelly-Moore exposure below the TLV can cause
15 mesothelioma. Show it to me.
16 A. Well, I suppose the most direct evidence we
17 have on the table today is the statement of your
18 underwriter.
19 Q. In other words, Union Carbide never said it?
20 A. Well, I mean, the language --
21 Q. Sir, please understand I'm going to get to
22 the underwriter, but I want you to focus on this
23 question.
24 Did Union Carbide ever tell Kelly-Moore
25 exposure below the TLV causes the meso? You've said
0253
1 yes. Your lawyer said yes. I want anybody in this room
2 of ten people to show me -- or eight people to show me a
3 piece of paper that says it.
4 MR. BICKS: Can we bring out the '69
5 toxicology report?
6 MR. LANIER: You bring out anything you've
7 got in here to show me, any piece of paper that says
8 it. We've got papers all over this room.
9 MR. BICKS: To expedite, do you want me to
10 help him find it?

11 MR. LANIER: Sure.
12 MR. BICKS: It's totally up to you.
13 MR. LANIER: I'm asking anybody. You can
14 help him again. You showed him the first one that
15 didn't say it. Show him another one. I'll give you
16 three strikes.
17 MS. PRINZ: Do you have Exhibit 2, by any
18 chance?
19 MR. LANIER: Barrie, I don't know if I have
20 Exhibit 2 or not. I don't think I do, but I might.
21 Yes. No, that's 32. No, I don't, Barrie. Here is
22 a bunch.
23 A. Well I read that, but --
24 Q. I mean, for you all to have told them
25 everywhere, it sure ought to be easier to find,
0254
1 shouldn't it?
2 A. (No response.)
3 Q. Okay. Now the lawyers have handed you this
4 asbestos toxicology report, which is the one dated May
5 of '69.
6 A. Yes, sir.
7 Q. Do you see that? Now, look in the first page
8 here where it talks about mesothelioma, a type of cancer
9 named meso has been noted to be associated with asbestos
10 exposures. These tumors, while rather few in number,
11 may occur in individuals with histories of only slight
12 exposures that are as much as 20 or 40 years earlier.
13 There is considerable evidence crocidolite is most
14 frequently associated with meso.
15 From the data available, it appears a TLV of
16 five may not be low -- may not be low enough to protect
17 against meso. Research continues.
18 A. Okay.
19 Q. Is that it?
20 A. That's it.
21 Q. Okay. Now, you all didn't say it there about
22 your chrysotile, did you?
23 A. (No response.)
24 Q. You say crocidolite. That's a different kind
25 of asbestos, isn't it?
0255
1 MR. BICKS: Objection to the form.
2 A. Yes.
3 Q. In fact, that's the very thing the Glidden
4 people got upset with you about, said you don't mention
5 the chrysotile, all you talk about is crocidolite in
6 there on meso, right?
7 A. Well, except that we never -- never took the
8 position that, you know, we were better off when -- you
9 know, when we had evidence that we were -- we were less
10 toxic than the crocidolite and amosite.
11 Q. Sir, the point is, you don't even tell them
12 there that -- you don't say anything about your
13 chrysotile. That's what Glidden found so disturbing,
14 isn't it?
15 MR. BICKS: Objection to the form.
16 BY MR. LANIER:
17 Q. Sir, doesn't that say crocidolite, not
18 chrysotile? It does, doesn't it?
19 A. It just says that crocidolite is -- is
20 considered to be more of a gravamen than the other
21 asbestos forms.
22 Q. Now, look at a different letter. Let's go at
23 this from another angle. Exhibit 31, which is another
24 document that you were shown by Mr. Bicks, that's a
25 letter to some fellow over in England, some British
0256
1 place, in '67, right?
2 A. Yes, that's right.
3 Q. Imperial Chemicals Industries?
4 A. That's right.
5 Q. In that letter, can you go back to the first
6 page, from Mr. Dernehl? It says, I think I see what
7 Mr. Sayers really meant, and it's talking about
8 Mr. Sayers and the way he's talked to those people.
9 A. Right. Right.
10 Q. Mr. Sayers is the same fellow who admitted in
11 writing to you all that five is not safe for meso,
12 right?
13 MR. BICKS: Objection to the form.
14 BY MR. LANIER:
15 Q. That's the same Sayers, Ian Sayers, isn't it?
16 A. Yes.
17 Q. Okay. He said -- then Dernehl in this letter
18 says, my present opinion is a threshold limit of five is
19 adequate against asbestosis, but he continues to say, I
20 am not prepared to say whether five will also protect
21 against meso.
22 He's not going to say. He doesn't know, does
23 he?

24 A. That's what he says.
25 Q. Now, that letter wasn't sent to Kelly-Moore,
0257
1 was it?
2 A. No, it wasn't.
3 Q. That letter was only sent to someplace in
4 England that had already been talking to Mr. Sayers, who
5 wrote the report that said this. The cat is already out
6 of the bag, right?
7 MR. BICKS: Objection to the form.
8 A. Well, here we go, lack of information. I'm
9 going to need more.
10 Q. Okay. Well, one thing you do have
11 information on, at least the lawyer gave you a letter --
12 when he gave you a letter, he didn't give you one
13 addressed to Kelly-Moore, he gave you one addressed to
14 some people over in England, right?
15 A. (No response.)
16 Q. Isn't that letter addressed to people over in
17 England, sir?
18 A. Yes, it is.
19 Q. Okay. Next let's look at the insurance
20 document. This is the Liberty Mutual document you were
21 telling us about, and you said that the Liberty Mutual
22 language was just like what Union Carbide had been
23 saying. There it is right in front of you.
24 A. Okay.
25 Q. In fact, I think you even said they lifted
0258
1 the language it looks like?
2 A. It looked like it, yes, it did.
3 Q. Now, sir, where does it say in the Liberty
4 Mutual document if you're exposed to asbestos below the
5 TLV it can cause meso?
6 A. (No response.)
7 Q. And I'll let the lawyer help you because I
8 don't think it's in there anywhere.
9 A. Well, let me take a look at it.
10 MR. LANIER: If you've found it, Mr. Bicks,
11 you're welcome to direct his attention to some
12 portion.
13 MR. BICKS: Sure. Threshold limit value.
14 MR. LANIER: He's on that page.
15 THE WITNESS: Yes.
16 MR. BICKS: Okay.
17 MR. LANIER: You just reach over and point
18 it. I'm not --
19 BY MR. LANIER:
20 Q. All right. He's pointing at this paragraph.
21 Let's read it together. More recently --
22 A. Evidence indicating asbestos fibers in the
23 development of mesothelioma, a form of cancer, has been
24 introduced. While the emergency standard of five fibers
25 per milliliter is at present based upon exposure to
0259
1 fibrosis, we should nonetheless take into account the
2 fact that exposures to even small quantities of asbestos
3 fibers over a short period of time may lead to
4 development of mesothelioma in a certain percentage of
5 the exposed workers.
6 For this reason there is now proposed an
7 emergency standard of two fibers per milliliter, and it
8 is imperative that exposure to asbestos fibers of the
9 longer fiber variety be kept to an absolute minimum.
10 Q. Okay. Sir, that doesn't say --
11 A. That's pretty close to what, you know, my
12 understanding of what we were telling all our customers.
13 Q. Well, sir, that -- that doesn't -- I agree
14 that -- that in some regards that's what you all were
15 saying to some of your customers, but sir, that doesn't
16 say that if you get exposed below the TLV, we think it's
17 going to cause mesothelioma. It's saying small
18 exposures, brief exposures. I think you all were saying
19 high exposures over brief time periods.
20 A. Yes, well, you know, I certainly, you know,
21 had information of high -- high exposures for a short
22 period of time.
23 Q. Yes. That's what you all were saying. You
24 all contravened what Liberty Mutual said, didn't you?
25 MR. BICKS: Objection to the form.
0260
1 BY MR. LANIER:
2 Q. Sir, you all were saying different than
3 Liberty Mutual, weren't you?
4 A. You look over here at respiratory protection,
5 Bureau of Mines-approved respiratory protection was
6 being worn by those employees who dump ingredients into
7 the mixes. However, this respiratory protection is
8 removed immediately after the ingredients have been
9 dumped. Also, none of the employees working the general
10 working areas of the plant were wearing respiratory

11 protection.

12 Our sample results indicate that all

13 employees in the department should use respiratory

14 protection until the asbestos concentrations are reduced

15 to acceptable levels through engineering controls.

16 Q. Right. That's Liberty Mutual, but sir, let's

17 stay on the subject of mesothelioma. You said it looks

18 like Liberty Mutual was saying the same thing you all

19 were. I want you to compare two. Compare Liberty

20 Mutual to Exhibit Number 7, which is the Myers article.

21 Myers says there is some evidence

22 mesothelioma can occur after brief exposures to

23 relatively high fiber levels, right?

24 A. That's right.

25 Q. Liberty Mutual said mesothelioma, even small

0261

1 quantities of fibers over a short period of time may

2 lead to the development of meso, right?

3 A. Now, I -- I'm sure that we could find

4 technical treatises who would say both ways, to tell you

5 the truth.

6 Q. I'm not fussing that with you. My fuss is

7 this: Liberty Mutual said small quantities, short

8 period of time could cause meso. That's different than

9 what Union Carbide and Myers said, isn't it?

10 MR. BICKS: Objection to the form.

11 A. That's -- you know, in terms of the -- of the

12 amount of exposure, total amount of exposure.

13 Q. Yes. It's different, isn't it?

14 A. Yes, it is.

15 Q. Yes. You all were saying no, no, no, no,

16 Liberty Mutual, it's not small quantities in a short

17 period, it's large quantities in a short period. It's a

18 big exposure. That's what you all were saying, isn't

19 it?

20 MR. BICKS: Objection to the form.

21 BY MR. LANIER:

22 Q. Do you see the difference?

23 A. I'm sure we can find a report that states

24 that, that Myers --

25 Q. No. Do you see the difference between what

0262

1 you all were saying and what Liberty Mutual was saying?

2 A. I do.

3 Q. Okay. And did you know that your company

4 after that Liberty Mutual report came in to Kelly-Moore

5 and said, hey, from here on out, let us do your

6 industrial hygiene work, let us do this Liberty Mutual

7 work, you don't need them?

8 MR. BICKS: Objection to the form.

9 BY MR. LANIER:

10 Q. Did you know your company did that?

11 A. No, I didn't know that.

12 Q. Did you know your company went in and in

13 1973 -- I'll mark this as Exhibit --

14 MS. HEGAR: 34.

15 (Rawlings Exhibit No. 34 was marked for

16 identification.)

17 BY MR. LANIER:

18 Q. -- 34 -- in 1973 your company came in and did

19 their own evaluation?

20 MR. LANIER: I'll also mark Exhibit 35, which

21 is six months later.

22 (Rawlings Exhibit No. 35 was marked for

23 identification.)

24 MR. LANIER: I'll mark Exhibit 36, which is

25 1975.

0263

1 (Rawlings Exhibit No. 36 was marked for

2 identification.)

3 BY MR. LANIER:

4 Q. And your company starts doing the fiber

5 counts for Kelly-Moore. Did you know that?

6 MR. BICKS: Objection.

7 A. I knew we did fiber counts for customers, but

8 I'm surprised that they were outside the RG.

9 Q. Did you know that in all of the reports that

10 you all started doing instead of Liberty Mutual, you all

11 never one time put any language like that in your

12 reports for Kelly-Moore?

13 MR. BICKS: Objection to the form.

14 A. Well, we -- we have here in part five, until

15 this level is reached, employees at the ceiling texture

16 dumping, dry texture dumping and dry texture bagging

17 should be incorporated into an adequate respirator

18 program.

19 Q. Right. Not one mention about mesothelioma or

20 cancer or anything in there, did you know it, not one

21 mention?

22 A. But are you trying to say that -- that your

23 people were totally unaware of the mesothelioma issue

24 being raised?

25 Q. No. What I'm saying is Union Carbide came in
0264

1 and trumped Liberty Mutual and everybody else and said,
2 trust us, you're safe if you operate within the TLV, and
3 Union Carbide said that over and over again. That's
4 what I'm saying.

5 MR. BICKS: Objection to the form.

6 BY MR. LANIER:

7 Q. In fact, that's what you believed, isn't it,
8 you're safe if you operate within the TLV?

9 A. No, I don't believe that. I say that, you
10 know, you're safe if you operate within the TLV as far
11 asbestosis and lung cancer is concerned. That's -- our
12 view is very much the same as the view of OSHA when they
13 went to the five, four years later to the two level.

14 But we had to raise the question because it
15 had been raised and in a very controversial way, some
16 experts going up, some going the other way, that perhaps
17 in mesothelioma -- my understanding was that very short
18 exposures, short but massive exposures, could be
19 causative and, you know, we were -- were warning that
20 school was still out on that, but in the meantime urging
21 everybody to use respirators wherever they found dust.

22 Q. Sir, you say that you all supported the OSHA
23 regulation. In fact, you went and testified to try and
24 keep the OSHA TLV from going down to two.

25 You went yourself to testify to that, didn't
0265

1 you?

2 A. Yes, I did. I went there because, first of
3 all, it was my impression at the time that it was
4 absolute overkill, and secondly, the -- I wanted to
5 point out that there was a good chance that would just
6 simply put us out of business.

7 Q. But if it's a safety thing, you ought to go
8 out of business, shouldn't you?

9 A. That's exactly right, but --

10 Q. And they went down to two anyway, in spite of
11 the fact that you testified against it, didn't they?

12 A. I did not testify against it. They were
13 suggesting a five -- a five level, and I said, well, you
14 know, we can live with a five level. You know, I was
15 supportive of the five level.

16 Q. But you testified against the two level and
17 said, well, two is excessive, didn't you?

18 A. Well, two is excessive, you know, at this
19 present time because we lacked the engineering type of
20 controls to get to the two level at that time.

21 Q. And they passed it anyway, didn't they?

22 A. Yes, and then we complied with it.

23 MR. BICKS: Mr. Lanier, can I just -- he's
24 getting tired.

25 MR. LANIER: Okay. I'm almost done.

0266

1 MR. BICKS: Can we kind of wrap it up?

2 MR. LANIER: Yes. I'm actually trying to do
3 that, Peter.

4 MR. BICKS: Let's not --

5 MR. LANIER: You're taking longer with these
6 interruptions than --

7 MR. BICKS: I'm not interrupting. Be fair to
8 this --

9 BY MR. LANIER:

10 Q. Sir --

11 A. You know, I feel like you're badgering me
12 now, quite frankly.

13 Q. Okay. Well, I don't mean to badger you.
14 I'll move on to another subject. I'm just saying when
15 you say OSHA, I'm reading your testimony, and I think we
16 need to keep the record clean. Okay?

17 A. Well, on OSHA I -- I did object in 1972 to a
18 two level, but --

19 Q. The questions were asked of you about
20 Kelly-Moore having lead in their paint. Do you really
21 know anything about that?

22 A. Well, I'm only saying it because I think most
23 paint companies in that era had lead in their paint.

24 Q. Right. Did you know, though, that
25 Kelly-Moore only had it in there for a few weeks and in
0267

1 the 1940s pulled it out because Mr. Moore had been told
2 that it was hazardous and he didn't want to take a risk?

3 A. No, I didn't know that.

4 Q. That they were the only paint company for two
5 decades in America selling paint without lead?

6 A. I used -- I used the wrong illustration. You
7 use many chemicals in paint. You know, all paint
8 manufacturers use many chemicals, and, you know, they --
9 they're -- all of them, you know, can't be squeaky clean
10 propositions.

11 Q. All right. I'll try and limit my questions
12 down. I've got about four more -- five more questions,
13 and I'll try and keep them brief. Keep your answers
14 brief, I won't badger you, and we'll be out of here.
15 A. Okay.
16 Q. You asked -- you were asked about the
17 customer's responsibility to do his own homework, and
18 you said, if I'm understanding right, yes, to the extent
19 they're buying stuff that we don't give them information
20 about; is that fair to say?
21 A. You were mixing different kinds of -- we know
22 this, you were mixing different kinds of asbestos in
23 your formulations, and -- and we really, you know, had
24 somewhat different views about how that reaction would
25 take.
0268
1 And basically, you know, we can -- we can get
2 into this chemical thing much deeper, you know, in a
3 follow on, but, you know, we had no idea about what
4 those chemicals are and how they're used.
5 Q. Did you know Kelly-Moore had their product
6 tested?
7 A. Tested for what?
8 Q. It said here tested for asbestos concerns.
9 MR. BICKS: Objection to the form.
10 BY MR. LANIER:
11 Q. Did you know that?
12 MR. BICKS: Can I just ask you who did that?
13 MR. LANIER: Union Carbide.
14 MR. BICKS: What year was that?
15 MR. LANIER: Peter, please, he's getting
16 tired.
17 MR. BICKS: But don't mislead.
18 MR. LANIER: We need to try and wrap this up.
19 MR. BICKS: I can show you five interrogatory
20 answers from your client --
21 MR. LANIER: We need --
22 MR. BICKS: -- where you've sworn under oath
23 you didn't test.
24 MR. LANIER: No, we didn't test. We had it
25 tested.
0269
1 MR. BICKS: Well, you just asked him did you
2 know that Kelly-Moore --
3 MR. LANIER: No, I said we had it tested.
4 Peter, please, he's getting tired.
5 MR. BICKS: Let's finish it up.
6 MR. LANIER: I feel like we should finish it
7 up and you should quit interrupting.
8 BY MR. LANIER:
9 Q. Did you know Union Carbide tested joint
10 compound products and published the testing results for
11 safety?
12 A. Yes, I think they did, yes.
13 Q. Yes. Should someone like Kelly-Moore be able
14 to rely upon Union Carbide to be honest about that?
15 A. Well, again, you know, you're trying to put
16 words in my mouth, I feel.
17 Q. No. I'm just asking, sir, can Kelly-Moore
18 rely upon Union Carbide to tell it the truth? Yes or
19 no, can they?
20 A. I suppose that if you knew all of the
21 circumstances and, you know, it was all out there on the
22 table of what the rules of the game were, I would say
23 yes, but here again, I don't have all of the information
24 about what was -- what was agreed upon in doing this
25 thing.
0270
1 Q. So maybe Kelly-Moore can trust Union Carbide,
2 maybe Kelly-Moore shouldn't, maybe Kelly-Moore should be
3 looking for fine print or something?
4 MR. BICKS: Objection to the form.
5 A. I object to the form too.
6 Q. All right. Next question. Are you
7 testifying as a Union Carbide man and a lawyer that when
8 OSHA says you've got to put one label on there for
9 warning, you're not allowed to put additional labels too
10 if you think it's necessary, you know, that's wrong?
11 MR. BICKS: Objection to the form.
12 A. Basically, you know, you're -- you're
13 acting -- asking questions about our -- our knowledge
14 and everybody else's knowledge evolves, and, you know,
15 you know as well as I do that school is still out as far
16 as --
17 Q. That's not my question.
18 A. -- mesothelioma is concerned.
19 Q. Mr. Rawlings, that's not my question. I'm
20 talking about labeling. The indication from your
21 testimony so far is that OSHA required a label, so you
22 all were not allowed to put anything else on other than
23 the OSHA label. Is that what you're saying?

24 A. No, that's not what we're saying.
 25 MR. BICKS: Objection to the form.
 0271

1 A. We said that we complied with the OSHA
 2 regulation.
 3 Q. Agreed. But you could put on additional
 4 labels if you thought it important, couldn't you?
 5 MR. BICKS: Objection to the form.
 6 A. If we thought they weren't alarmist, right.
 7 Q. Okay. Next question. I want to make sure I
 8 understand exactly who you were at Union Carbide.
 9 You were actually the man in charge at Union
 10 Carbide over all asbestos at one point in time, right?
 11 A. Yes, a period of time.
 12 Q. You were in charge of the salespeople?
 13 A. That's correct.
 14 Q. You were in charge of the marketing people?
 15 A. That's correct.
 16 Q. You were in charge of the scientists?
 17 A. Well, no. You know, Union Carbide as far as
 18 Dernehl is concerned, he was in an advisory capacity to
 19 us, but he didn't have a solid line to me by any means.
 20 Q. Okay. But in terms of the scientists working
 21 the asbestos end, at least the non-medical scientists,
 22 you were in charge of them, the Rhodes, those kinds of
 23 people?
 24 A. Yes.
 25 Q. You were in charge of the mine operations?
 0272

1 A. Yes.
 2 Q. All of these different divisions reported to
 3 you?
 4 A. Well, you know, bear in mind there's
 5 something that, you know, we haven't looked at here.
 6 Sometime in '73 I gave up my administrative chores and I
 7 took over all of the mining operations of Union Carbide,
 8 asbestos being, you know, the most minor of those
 9 operations, but I had uranium, vanadium, tungsten mining
 10 operations, primarily in the western United States.
 11 And so there was a product manager for each
 12 of those additional businesses, and so while I was doing
 13 financial control, the personnel and government
 14 relations as a -- as a staff man, I had asbestos for
 15 probably a year and a half as a sole business operation
 16 while I did the other things, and then --
 17 Q. Okay.
 18 A. -- I got rid of the staff position.
 19 Q. Last subject. You think Union Carbide wound
 20 up buying coveralls. You don't know one way or the
 21 other, do you?
 22 A. I do not know.
 23 Q. And you don't know whether or not, if they
 24 were bought, it's because California required it?
 25 A. No. I think that it -- that letter says --
 0273

1 that Thurber wrote said that California doesn't require
 2 it; when they do, we'll buy them.
 3 MR. LANIER: Fair enough. Thank you. Are we
 4 done?
 5 MR. BICKS: I'm going to ask -- have to ask
 6 you just two or three questions.
 7 THE WITNESS: Okay.
 8 MR. LANIER: It's getting late, Peter.
 9 MR. BICKS: I know it is.
 10 MR. LANIER: Let's wrap it up. He's getting
 11 tired.
 12 THE WITNESS: That, I'll agree to.
 13 MR. BICKS: That, you can agree to. Off the
 14 record.
 15 THE VIDEOGRAPHER: Off the record.
 16 (Discussion off the record.)
 17 THE VIDEOGRAPHER: On the record.
 18 REDIRECT EXAMINATION
 19 BY MR. BICKS:
 20 Q. Mr. Rawlings, two questions. Remember you
 21 were trying to find the document where Union Carbide
 22 warned Kelly-Moore respirators should be used with tape
 23 joint compound?
 24 A. Yes, sir.
 25 Q. Take a look at this exhibit, Exhibit Rawlings
 0274

1 4, UCC 26, the Calidria compound brochure, and do you
 2 see that? I'm pointing to a particular part of that
 3 document. Do you see where it says about employees?
 4 A. Well, it says, employees should wear
 5 respirators where dusting occurs in finishing products
 6 such as sanding tape joints.
 7 Q. And did Union Carbide give that information
 8 to Kelly-Moore?
 9 A. I'm sure they did, because it was going
 10 specifically to -- to the tape joint compound customers.

11 Q. Another question just about the Mellon study.
12 You -- you think you saw the 1971 Mellon study, but
13 you're not sure about the 1966 one; is that fair?
14 A. I know I didn't see the 1966 one.
15 Q. Okay. In looking at information on health
16 hazards, is it -- is it -- does it make sense to look at
17 the most recent information that a company has available
18 because it changes over time?
19 MR. LANIER: Objection to form.
20 A. I think it's reasonable, yes.
21 MR. BICKS: Okay. Thank you.
22 MR. LANIER: Mr. Rawlings, I don't have any
23 more questions.
24 THE VIDEOGRAPHER: This concludes the
25 deposition. The time is now 5:41. Off the record.
0275
1 COURT REPORTER: Do you need this
2 transcribed?
3 MR. BICKS: I'll take a mini and an ASCII.
4 MR. LANIER: I'll take everything you've got.
5 (Deposition concluded at 5:41 p.m.)
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7 STATE OF FLORIDA)
8 COUNTY OF ORANGE)
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11 I, REBECCA L. FELLA, being a Notary Public, State of
12 Florida at Large, do hereby certify that JAMES W.
13 RAWLINGS personally appeared before me and was duly
14 sworn.
15
16 Witness my hand and official seal this 11th day of
17 December, 2003.
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23 Court Reporter
24 Notary Public, State of FL
25 Notary Comm. No. CC-968031
Comm. Expires: 10/01/04
0277
1 C E R T I F I C A T E
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3 STATE OF FLORIDA)
4 COUNTY OF ORANGE)
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6 I, REBECCA L. FELLA, Registered Professional
7 Reporter, certify that I was authorized to and did
8 stenographically report the foregoing proceedings, that
9 a review of the transcript was requested, and that the
10 transcript is a true and complete record of my
11 stenographic notes.
12 I further certify that I am not a relative,
13 employee, or attorney, or counsel of any of the parties,
14 nor am I a relative or employee or any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action
17 DATED this 11th day of December, 2003.
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, 2003. Also attached is the Errata Sheet to be completed by
the deponent when reading your copy of the deposition.
After the witness has completed these forms, please return them
to our office for inclusion in the original transcript.
If the reading and signing has not been completed prior to
January 11, 2003, we shall conclude that the reading and signing
of the transcript has been waived and we will forward the
original transcript to the ordering attorney without further
notice.
Your prompt attention to this matter is appreciated.
Sincerely,

Rebecca L. Fella

E R R A T A S H E E T
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE
IN RE: Kelly-Moore vs. Dow Chemical

Page	Line	Correction	Reason
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Under penalties of perjury, I declare that I have read my
deposition in this matter taken on December 9, 2003, and that
it is true and correct, subject to any changes in form or
substance entered above.

DATE	James W. Rawlings
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